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ABSTRACT

The successful functioning of a democratic form of government depends on a number of very basic principles. The issue confronted at this conference, the provision of legal research materials to prisoners, is tied very closely to two of these principles: first, that no individual should be without recourse to the courts and to the law; and second, that no branch of government or agency of government should function outside a system of checks and balances. The "Gilmore" decision, much discussed at this conference, says that the State affirmatively has to go forward and make sure that prisoners effectively have a way of making their claims available to the courts. This decision seems to also require law libraries and some form of legal assistance in all the jails in the country as well as the long-term prisons. The fifteen papers presented at this conference are presented in this publication. A draft statement on prison law library service prepared for the conference is appended. (Author/NH)

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PRISON LEGAL LIBRARIES

IDEA INTO REALITY

CONFERENCE PROCEEDINGS
April 22, 1972
University of California, Berkeley

Sponsored by the Social Responsibilities
Round Table of the American Library Association
and the School of Librarianship,
University of California, Berkeley

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PRISON LEGAL LIBRARIES - IDEA INTO REALITY

PHYLLIS DALTON, Assistant California State Librarian

To be on our way this morning I want to say "Welcome to the workshop." We're happy to have everybody here, and we do have two out-of-state people I would like to mention. Bob Ensley came from the Illinois State Library for this program especially. John Mason is the librarian at Montana State Prison and runs a good program up there, so you may want to talk to these two out-of-state people.

The title of this conference, Prison Legal Libraries - Idea into Reality, gives me a word of encouragement. I think the encouragement is the "idea into reality," because up to now, as most of you know, there has been much, much talk and not a great deal of action resulting from that talk. This is my opinion. You can agree or not. There has been much, much study in committees with not much resulting in real library services. I believe myself that study is not needed any more but that action is. So that we can all be brought to the same level of perception, we'll have the problem explained this morning prior to the development of any proposals this afternoon.

The federal government, the state, the city and the county all have a part in planning for the improvement of the criminal justice system and the reduction of crime. There has been a call for imaginative and progressive efforts to improve the state's criminal justice system. The part that prison libraries have in this is to provide more imaginative and progressive efforts. But it has to be emphasized with people like

us, because I don't think anyone else is going to do it. We're the only ones who can really do this, and we do have a part in increasing the effectiveness of correction and rehabilitation.

I think that in reading about projects that have been funded, one of the most interesting ones I have found funded to improve criminal justice was a grant made to a county board of education. It's a project to help kindergarten pupils with potential chronic learning problems, to identify the roots of the potential problems at the kindergarten level, and to reduce the chance of future failure and the possibility of a criminal career or some other less than acceptable career. Perhaps the thrust of our program, though, should be the here and the now as well as a concern for the future population.

WILLIAM BENNETT TURNER, Attorney, NAACP Legal Defense and Education Fund

"Relevant Court Decisions - A Legal View"

I so rarely have a chance to talk to anybody who is not a lawyer about law that if I am confusing or mix things up, I hope we can clear it up in the question period. I am going to assume that none of you are lawyers, though I notice from the list outside that some of you run law libraries and much of the material I am going to cover should be somewhat familiar to you.

The story begins with a decision of the Supreme Court back in 1941 called Ex parte Hull. In that case the prison officials were reading writs of habeas corpus and legal pleadings that prisoners tried to send out to the courts to ascertain whether the legal papers met the prison's

standards. The prison had not allowed a particular legal pleading to get to the court and the prisoner finally found his way into the Supreme Court of the United States. It ruled that the prisons had no business ascertaining whether legal pleadings meet the prison's standards - that's a job for the courts - and that prisoners have a right of access to the courts so that the courts can determine their claims, especially when these claims relate to the legality of their imprisonment.

For about 25 years Ex parte Hull was virtually the only prisoner's rights case to be decided by the Supreme Court or any other court. But as you probably know from reading the newspapers, in the '60's the "Warren Court" (the U.S. Supreme Court) handed down a number of decisions in the area of criminal law that radically changed criminal procedure and opened the door for prisoners, people who had been convicted and imprisoned, to challenge retroactively the legality of their convictions. It became obvious because of some of these new decisions that under the law as developed in the '60's a good many prisoners had been illegally convicted and their convictions were unconstitutional. If they could get into the right court with the right claim, they might be able to go free. Well, what could the prisoners do about it? As you no doubt know, most prisoners are penniless, indigent; they were before they came to prison and they certainly are while they are in prison. They are not able to earn any money to speak of and rarely do they have any other resources at their command. They are not able to hire a lawyer not only to represent them in court but also to advise them as to what their rights might be in upsetting their convictions.

The public defender system is not available to prisoners after conviction and immediate appeal. In California and in every other state when a person has been convicted of a crime, he has a right to appeal and the Supreme Court has held he has a right to a free lawyer on appeal if he can't afford one. But after the appeal is over there is no provision for legal assistance for prisoners provided by the state. Yet the Supreme Court said, during the mid-60's, that there are a number of rights that prisoners could raise after the appeal process had been completed - by post-conviction remedies - collateral attack, it's called a number of different things - but it can take place after the appeal process has been completed.

It might be of interest for you to know that only five percent of people who are convicted of felonies in the state of California actually take a direct appeal from their conviction. Many prisoners, after they are in prison for a while, think about what happened to them, about the assembly-line process that put them where they are, and decide that maybe they do have a constitutional claim that would show that they were illegally convicted. But they don't have a lawyer, they don't have any money, and they're not entitled to a lawyer provided by the state. There are no law books, no law libraries to speak of in prisons that could help them in researching their own claim, assuming they are capable of doing so.

Since there was no official assistance provided for prisoners, they naturally resorted to self-help, and a number of intelligent, resourceful individuals became what are called "jailhouse lawyers." They worked for themselves and they worked for other prisoners. They became the

bane of prison officials. According to the prison officials' version, they built up their own power structure, they never worked for free, they always extracted favors - it might be money or cigarettes, it might be sexual favors - but they're going to get some kind of compensation, according to the officials, for doing their work, and if they don't, they might try to extort it. Prison officials said jailhouse lawyers cause a lot of problems in prison, so everywhere in the United States, in every prison, officials had a rule against jailhouse lawyers. It was against the rules of the institution to help other prisoners or even request help on legal matters from other prisoners. If you held yourself out as a jailhouse lawyer, you were likely to be spending the entire length of your term of imprisonment in some form of solitary confinement because the officials wouldn't let you practice your trade whether you were extracting favors for it or not.

There was a prisoner in Tennessee State Penitentiary named Willie Joe Johnson. Back in 1966, from maximum security where he was placed for having helped other prisoners, he scrawled out a piece of paper and mailed it off to the court. He called it "motion for law books and typewriter." It got to a federal judge down there who may or may not have been fed up with the flood of prisoner petitions that started coming in, all very difficult to follow, incomprehensible, legally frivolous, many of them repetitious, but a few of which had merit. (In California at about that time, in the fiscal year 1968-69, 1,029 prisoner petitions were filed in the federal courts and in the state courts 6,200 prisoner petitions were filed. That in California amounts to

about one petition for every three prisoners in the state in one year alone.) The Federal District Judge in Tennessee who received this piece of paper from Johnson treated it as a writ for habeas corpus and ordered a hearing on the writ, a fairly rare thing for a judge to do back in those days. The judge decided that, since the prisons in Tennessee offered no official legal assistance to prisoners, they couldn't enforce this jailhouse lawyer rule. They had to let prisoners help each other. He ordered Johnson released from solitary confinement and back to the regular prison population.

The State of Tennessee appealed, and the Court of Appeals in that case disagreed with the Federal District Judge and said that the State of Tennessee had a real interest in preventing the unauthorized practice of law, so the jailhouse lawyer rule was valid. Johnson appealed to the United States Supreme Court. In 1968, in Johnson v. Avery, the Supreme Court agreed with the Federal District Judge that unless the state provides a reasonable alternative to assistance among prisoners, they can't prevent that assistance.

What does this mean, a "reasonable alternative" to inmate legal assistance? There was a case our office handled that was decided last December: it came out of the Texas prison system and was called Novak v. Beto. In Texas they decided even after the Johnson decision to cling to their jailhouse lawyer rule. They tried to prove that they had a reasonable alternative for the prisoners in Texas. For about 15,000 prisoners in Texas who were in 13 separate prisons they had a law library in each prison. The library was contained in a box that is three feet long, one foot deep and one foot wide. That was their law library for

each prison. They had printed writ of habeas corpus forms, where you're supposed to fill in the blanks and then send it into the court, and the court would then rule on it. The courts did rule on them. They denied them all out of hand.

About two years ago Texas hired tw young lawyers fresh out of law school to represent the prisoners on their post-conviction problems. This was an innovation. It was a good step at the time, but the two young lawyers were flooded with work and couldn't begin to handle the work load. When Novak v. Beto went up to the Court of Appeals that governs the deep south the Court decided the burden is on the State to show that the reasonable legal needs of prisoners are being met by the program. If the State can't satisfy that burden, then they can't enforce their jailhouse lawyer rule.

That case is not quite over yet. Texas has decided that they're afraid enough of jailhouse lawyers that they are going to keep the rule against them and beef up their program. Last month the State got something over $400,000 from the federal Law Enforcement Assistance Administration and matched it with $200,000 of its own. They are going to put real law libraries in each of the 13 units of that system, and they are hiring ten new lawyers full-time. So the lesson is that if the state chooses to prevent jailhouse lawyers from playing their trade, they are going to have to cough up a lot of money and a lot of legal resources to assist prisoners to meet their legal needs.

But what if the state doesn't have the jailhouse lawyer rule? California abandoned it after the Johnson decision, as many other states did. The Supreme Court of California decided a case two years ago: In

re Harrell, which is really a variation on the theme of Johnson v. Avery. Here the Court decided that since prisoners can assist each other with legal work, the State can't stand in the way of that assistance by prohibiting prisoners from possessing the legal papers of other inmates. What was going on there was that the jailhouse lawyer would accept a job for another prisoner, taking the other prisoner's papers to his cell to work on them and then give them back. But there was a rule in the California prisons against possessing another prisoner's legal papers. Ostensibly this was to prevent extortion and problems if the lawyer lost his so-called client's papers and so on. It might lead to violence and other difficulties, officials feared. The California Supreme Court said that prison officials have nothing to fear, and the prisoners are not going to be able to render any meaningful assistance unless they can have and possess each other's papers. If you have problems in your prisons with jailhouse lawyers, you can deal with problems of extortion and violence through your normal disciplinary procedures. But you can't have this over-all broad rule that effectively prohibits jailhouse lawyers from doing any job.

This bring us up to the case that I suppose is the reason for this conference today: Gilmore v. Lynch, now called Younger v. Gilmore, handled by John Wahl. I'm sure you're going to hear a lot about it in detail today. I don't want to spend too much time on it. The Gilmore case started, as I understand it, because the State of California was about to have a book-burning. They came out with a new regulation that purported to standardize the law libraries such as they were in California prisons. They would standardize them by having a very short list

of legal books that would be permitted in each prison of the California system; any books that weren't on that list had to be destroyed. They were going to be confiscated, taken away. When the Gilmore case was brought to a three-judge court sitting in San Francisco, the Court decided that the list of law books permitted for California prisons was grossly inadequate and that no really meaningful legal research could be done using this small list of books.

The Court rejected a number of arguments that were presented by the State and that have been presented in other states. One was that a prisoner doesn't really need to do any more than state the facts of his case in order to get a hearing before a judge. That's essentially the printed-writ-form argument: all you have to do is fill in your name and what happened to you, and the judge will take over; he'll release you if you have been illegally convicted. And it's just not real; it's just not what happens in the process. Unless a prisoner knows which facts are important, which are really relevant, and unless he knows all the technical rules of pleading, including which court to file in, what claim to raise, what law to cite, he just doesn't stand a chance, realistically, of getting a hearing at all. His petition is going to be denied out of hand by busy judges and clerks who do not have time to ferret out for the prisoner the claims that he might have made. So the Court said to the State that that's ridiculous. The prisoner needs a good deal more than just the facts of his case in order to get a hearing.

The Court also rejected the State's justification for its new list of law books: that the State doesn't have a lot of money and wants to spare the taxpayers the economic burden of providing law libraries for all the prisoners. The Court said that economy is not an overriding consideration when you are talking about citizens who may have been illegally convicted. The Court also rejected the argument that the system had to have a standard library in each system. That's not very important.

The Court also went out of its way to say that it's not a privilege for a prisoner to challenge the legality of his imprisonment but it's a right. This goes back to the 1941 decision in Ex parte Hull: a prisoner has the right of access to the court so that his claim of illegal conviction can be heard. Finally, the Court said that the burden is on the State to justify any restriction on the prisoner's access to the courts.

The real significance of the Gilmore decision, and what made it so surprising and, in a sense, revolutionary, is that it says that the State has an affirmative duty to make effective the access of prisoners to the court. Remember that the Hull case back in 1941 just said that the State can't impair or erect barriers to access to the court, which is a negative type of duty. The Johnson decision also said that you can't have a rule that inhibits access to the court. But the Gilmore decision comes along and says that the State affirmatively has to go forward and make sure that prisoners effectively have a way of making their claims available to the courts.

The State of California appealed Gilmore v. Lynch to the Supreme Court of the United States. Last year the high court affirmed the decision in the Gilmore case without any comment at all in an obscure two-

sentence decision which came somewhat as a surprise. Some of the decisions that may have led to it weren't mentioned by the Court; there were a couple of decisions in the criminal law area that said prisoners are entitled to free transcripts of their trials provided by the State in order that they could have a meaningful appeal (Griffin v. Illinois). They are entitled to that because most prisoners can't afford them. Only a few rich prisoners can afford to hire lawyers and buy transcripts. The Supreme Court held that you can't deny a poor man the same access to the courts that a rich man would have.

There was also a decision earlier last year in a completely unrelated area that the Court may have been thinking of when it decided Younger v. Gilmore, a case called Boddie v. Connecticut that was revolutionary in its own right. That case involved the right to get into court to get a divorce if you are poor. As you probably know, there is a filing fee that you have to pay in order to get a case in court, and Connecticut had extracted a fee of something like $50 in order to file for divorce. Mrs. Boddie wanted a divorce and couldn't afford the fee, so her case found its way to the Supreme Court, which said that if a court is the only way of untangling a legal dispute, you just can't bar that access to the courts on the grounds of poverty. That may have influenced the Gilmore decision.

Since the Gilmore decision the question has arisen that if you have to give law libraries to prisoners, what about jails? There are thousands of jails in the United States. Do they have to have law libraries too? Or is it only long-term prisons? A case from the San Antonio Jail was sent to the Supreme Court called Cruz v. Hauck, and the

Court there in a very obscure one-liner sent it back to the lower courts for hearings on the authority of the Gilmore decision. So while it's not very clear yet, it looks as though law libraries and some form of legal assistance are going to be required in all the jails in the country.

What does this mean? It means a bonanza for the West Publishing Company. It has been a wonderful thing for West. They have packaged a model prison law library which is selling like hot cakes all over the country. They're putting 13 of them in Texas, as I mentioned before. I'm sure they're going to sell them in the California prisons. They're doing it all over the country. But I submit, and I depart for a minute from talking about court decisions, that law books are not the answer for a number of reasons. In the first place maybe 40 to 50 percent of the prisoners are functionally illiterate. They might be able to read and write a little bit. A lot of them are not very good with the English language, especially in California and Texas. Spanish-speaking prisoners are not going to be able to read our law books or deal with the legal matters. Even literate prisoners, those who can read and write, even those who finish high school, are by no means legally literate. They can't read, understand, and manipulate legal material even if they understand law libraries to the extent that they'll be able to find the cases that they would be looking for. Once they have found them, are they going to be able to read and understand them and use them? Ask yourself, if you had an eighth grade education, maybe in a ghetto school, maybe you speak Spanish, would you rather have a law book or would you rather have a lawyer?

What's required is legal services, not law books. This means legal services of the kind where you sit down with a prisoner and you get his story and you advise him, counsel him and figure out whether he has a claim in the first place. Does he have a claim? Many of them don't. They don't have a legal claim. They should not be filing anything in court. Some of them do, but they're not going to be able to write it up, articulate it in writing in a way that a court is going to be able to understand or do anything with it. So what's needed in the first place is legal counselling and in the second place legal writing. That's going to have to be done by somebody other than the prisoners. The question of legal representation once the case gets to court is a problem the courts will take care of, but it's the preliminary kind of legal assistance that is required. I don't think that law books are going to do the trick.

All of the cases that I've mentioned have dealt with the area of criminal law and the question of whether a prisoner can challenge the legality of his commitment. But you should keep in mind that prisoners have a good deal more legal problems than just the reason why they're in prison. They are in two areas: prisoners have, first, the same kinds of problems that we all have and the same kinds of problems that poor people in particular have. They have problems with consumer credit, they have problems with welfare for their families who are trying to make it while they are in prison, they have problems with divorce: many prisoners are served with divorce papers while they are in prison. They have a whole range of civil legal problems, some of which are because they are in prison and some of them not, but they have to be dealt with.

These court decisions deal only with post-conviction remedies. But you must figure on delivering legal services for prisoners on other things as well. Then there is a whole area of law that is developing now on prisoners' rights while they are in prison, rights vis-a-vis the prison administration, not to have the administration do disastrous things to them: solitary confinement, censorship of correspondence, censorship of reading material and so on. Prisoners should be assured the fundamental rights of citizens in our society even though they are behind bars. Prisoners are not given any official assistance by the system and yet it is a very important area and one where legal services have to be delivered.

QUESTION: What do the California Corrections people really plan to do in response to the Gilmore decision?

TURNER: I think John Wahl will probably discuss this later on. The State has, in response to the Gilmore decision, filed new regulations on access to the courts, and they have decided not to offer legal services of any kind, no law students' programs, no para-professional programs, no bar association programs, no public defender programs. All they are going to do is buy some West law books and put in a law library. The plaintiffs in that case, the prisoners, are contending that that is not enough, but the Court has not yet ruled on what is going to happen.

QUESTION: I was wondering, in your opinion, if public defenders or any other unofficial or official legal assistance groups will ever take on cases relating to prisoners' rights.

TURNER: In California the situation today is that the public defender handles criminal trials only. On appeal the convicted person gets an appointed lawyer but not through the public defender program. After the appeal there is no official assistance at all. I think the first step has to be to provide assistance to make sure that the man is not illegally in prison, and that's very difficult to get through the Legislature. Prisoners don't have any political clout at all. They can't vote in the first place. So the legislators put prisoners at the bottom of their list of priorities. The first thing you have to get through the Legislature is the right to some kind of assistance as to your conviction, but I think it's a very politically sensitive subject right now whether prisoners ought to be suing the system and whether the State ought to subsidize such suits.

MARJORIE LE DONNE, Co-Chairman, American Correctional Association Committee on Provision of Legal Materials for Prisoners

"The Problem Explained"

The successful functioning of a democratic form of government depends on a number of very basic principles. The issue we are confronting today, the provision of legal research materials to prisoners, is tied very closely to two of these in particular: first, that no individual should be without recourse to the courts and to the law; and second, that no branch of government or agency of government should function outside a system of checks and balances. Many of the problems we are confronted with today in regard to the functioning of our correctional system, actually our whole criminal justice system, stem from an

earlier time when we didn't apply these basic principles of democratic government to a convicted criminal. It was about 150 years ago that we began building prisons and establishing systems for taking care of those who broke our laws. At that time we regarded prisoners or convicted criminals as individuals who, by their own willful acts, had turned against society, more or less as enemies of society; consequently they were no longer a part of our society. We were too humane to execute them, so we did much as we would with a war criminal, put them in a place apart, and we didn't apply our rules of government to these beyond the pale.

While we now recognize that the pressures and inequities of society itself contribute largely to the shaping of the criminal and of criminal behavior, we are, nevertheless, attempting to deal with those convicted of crimes within the framework of systems developed during that earlier time. Our concepts and goals may have changed, but our system design is 150 years old.

Ex-convicts have only recently been granted the right to vote. To this day, no one presently confined in a jail or prison is allowed to vote in any election. In most states a convicted felon is considered to have suffered "civil death" at the time of his sentencing. It was only four years ago that the California State Legislature revised Section 2600 of the Penal Code to eliminate the clause dealing with the civil death of felons and substituted for it what amounted to a bill of rights for prisoners.

For many years the attitude of the courts has been one of "hands off" prison administration. Slowly the courts have begun to recognize

that they do have a responsibility to review procedures in prisons and to hear pleas from prisoners. The American Bar Association has also begun to recognize this need. They established a Commission on Corrections Facilities and Programs. Later the Bar Association, through an Advisory Commission on Sentencing and Review, developed minimum standards for post-conviction remedies. At that time the Bar Association, because of this tremendous flood of appeals and the staggering number of writs that were being presented to the courts, recognized that no system of direct assistance from an attorney could possibly be implemented. They recognized that at this time, at least in the initial stages, prisoner litigation must be on a do-it-yourself basis, a self-help basis. They recommended that law library facilities be enlarged and access to law materials be made available to prisoners. They also recommended that these be backed up by some kind of counselling for inmates who were preparing their own cases. The flood of frivolous writs was a problem not only to the courts but also to an inmate. You can imagine devoting several years of your life to a lost cause when, if you had had ten minutes with a professional at the beginning of the endeavor, he could have told you it was useless.

It is no accident that the Gilmore v. Lynch decision came out of California. In 1966 the American Correctional Association did a survey of prison library services throughout the country. California, along with Illinois and New York and the Federal Bureau of Prisons, led other states in the provision of library services to prisoners. As soon as you begin to provide books for inmates the thing that they want immediately is more and more law books, more and more legal material.

This really presented a tremendous problem. Even though our California prison libraries were better than others, they were still very simple operations. Each library functioned almost in isolation with a backup system of interlibrary loans from the State Library. There are no copying services available. There are none of the more sophisticated systems for information retrieval and distribution which, in fact, do not exist in any prison library system today, not, at least, in this country.

With the flood of requests and the pressure of inmates' research activities overburdening these library systems, the California Department of Corrections in an attempt to cope with this very real problem came up with Paragraph 330.041 in the Manual of Administrative Procedures. This described, defined and limited the basic law collection in each institution. Now in eleven of the 13 California institutions this directive did, in fact, increase and enlarge the law collection. Only at Folsom and San Quentin did it involve a contraction of services formerly available, and it was this denial of access to the materials on hand that brought the whole issue within the area of judicial review in Gilmore v. Lynch.

Even before the federal Supreme Court reaffirmed the lower court decision there were a number of agencies and groups that recognized a developing trend, and steps were beginning to be taken in various parts of the country. I might add that the American Correctional Association is standing at the bridge and we're watching West Publishing Company. The New York Department of Corrections also applied for a Law Enforcement Assistance Administration loan or grant and established six basic law libraries under this West Publishing Company proposal. These now

begin to answer the needs of men in those institutions. They ignore the needs of men in county jails, in smaller institutions. The American Association of Law Librarians undertook a survey of law library services available through prison libraries to prisoners and also of law library services outside the prison system that would make available materials to prisoners. The Institute of Library Research here at the University of California has developed a proposal for a survey of prison library services to be done on a national basis. It has been approved and that project is now under way.

Then the American Correctional Association, at the request of many wardens and prison administrators throughout the country, established the Sub-Committee on Legal Research Materials last year at Miami. This group of librarians immediately saw the problem not as one of providing books and materials but of establishing a system which would allow an inmate to tap all of the material already available in the outside world so that a man had access not only to a basic collection within an institution but could request anything that was needed from any library anywhere in the country.

Recognizing that this kind of a plan could not be developed without the knowledge and expertise of many and various professional groups and governmental groups, it has been proposed by the American Correctional Association that a seminar be held in Washington D.C. They have received a grant from the Department of Health, Education and Selfare and the seminar is scheduled for May 22, 1972. Participants in this seminar will be representatives of the American Bar Association, the American Library Association, the Federal Bureau of Prisons, the Law Enforcement Assis-

tance Administration, the Law Library of Congress, and members of Congress, and very importantly it will include prisoners and ex-prisoners, including writ writers.

It is almost impossible for us to conceive of the difficulties writ writers in prisons face. There have been many well-meaning attempts to answer their needs, but we just can't see it until we are in their shoes. It is essential that this be, again, based on democratic principles and efforts at self-help. Those most closely involved must have a means of pursuing their own self-interest. There have been a number of suggestions that have been made about meeting this need. Some of them are to provide basic or very simple forms, especially for civil case needs, and for the use of those inmates in county jails. Another is the use of copying machines and copied materials rather than borrowing original materials which are so subject to vandalism, especially when they are under the pressure that legal materials are subjected to in a prison setting. They take a beating that no public librarian could imagine.

Another suggestion has been to use microform material. Now that the mandate is applicable to the entire country, the cost of reproducing these materials when weighed against the much larger market for them is competitive with other materials, and this begins to appear to be a very reasonable approach and a very sensible one. Another suggestion has been a network of information centers with a comprehensive collection in each state, with requests for materials duplicated and then sent out. Each individual institution would then have the necessary tools, indexes, card files and catalogs that an inmate would need to tap the larger collection. We would then also exchange through interlibrary loan materials

from state to state. This would eliminate much duplication. Another suggestion, and a very good one which seems very likely and workable now, would be to establish within the Library of Congress a special division similar to the Division for the Library Services for the Blind and Physically Handicapped. It would be their function to answer the law library needs of prisoners. And also they might be able in a way to provide a limited kind of counselling to inmates who are in very isolated areas of the country. It is essential that all of this law library service be backed up with some kind of professional counselling: you need more than books; you need to know how to proceed through the books.

Unfortunately, most of our prisons are in very isolated areas and it is difficult to get an attorney in. A number of states do have student legal aid programs, but again that is very dependent on the geographical location of an institution, and not all of these are located where it would be practical to have these kinds of consulting services.

Whatever plan is devised should, as much as possible, be established outside the authority of prison administration. It is essential that we begin to reestablish the system of checks and balances which in the past has not been applied to prison administration. It has been an autonomous thing apart from the rest of our democratic processes. Whatever we do, it is hoped we do not use a piecemeal, makeshift approach. We have an opportunity now to work together, to pool our resources, and to establish a truly comprehensive and workable plan. I hope that we will not settle for anything less.

CY H. SILVER, Law Librarian, California State Library

"The Legislative Picture and the State Law Library"

Jonathan Lewis of Senator Petris's staff is supposed to speak this afternoon on a topic closely related to the legislative picture, and I think the relationship is almost so close that it is congruent. However, let me spend one minute on briefly summarizing the rise and fall of S.B. 73 of last year, although I'm not going into any behind the scenes things about which I know very little.

Briefly, Senator Petris introduced legislation last year which would have the Department of Corrections install a reasonable law library as part of each prison library. As I understand it, the make-up of the collections as initially proposed was more or less a lawyer's collection. This was later felt to be unsuited for untrained inmate needs, and the bill was amended to reflect the realities of prison library life. The funding for the bill was to be from the Inmate Welfare Fund, which is a fund not appropriated by the state but designed for the inmates' own recreational and educational purposes. The bill had a lengthy history of amendment and re-amendment. It finally passed the Senate and went to the Assembly Ways and Means Committee, which did not approve its passage. There is much speculation as to why this happened. Perhaps Assemblyman Willie Brown this afternoon might speak to this. I don't know, but as it stands now there is no legislation to have law libraries in prisons.

The other part of my remarks are on what the State Law Library offers to prisons. To understand this you have to realize that the State Law Library is part of the State Library and as such follows the

same philosophy and pattern of service, which is designed to back up libraries throughout the state both in books and in reference work. The presupposition to this is that the libraries we back up are indeed libraries and have collections that are compatible with the needs of their users. This is not the case with the law libraries in prisons. As a result the demands on the State Law Library are for very basic materials as well as for supplemental materials. We try to fulfill both functions but we do not have separate funding to do so. Therefore, out of our regular work load and our regular budget, we are providing the services that we do provide. Over 1969-70, in fiscal 1970-71 our circulation of law books to prisoners increased 55 percent and from 1971 to 1972 to date it's up another 17 percent. This is in the face of a declining prison population, so I think we are strained as far as we can go to provide backup services and basic services. It is our hope that the law libraries within the prisons will become adequate so that our role as a supplemental institution can be clearly that, not having to fulfill both ends of the locallibrary spectrum. We do not limit ourselves to a basic list. We have put constraints on what we lend because of the sheer time involved in gathering certain types of materials. I do not like doing this, and under Phyllis's prodding the constraints have been lessened and lessened. I would like to take them all off, as the commercial goes, but I can only do so when somebody else has them on. And that's having clothed the shelves of prison libraries with some law books.

(Mr. Silver prepared for the conference a statement on the implementation of the Gilmore decision. This statement is entitled: "Draft Statement on Prison Law Library Service Prepared for the Conference on 'Prison Legal Libraries - Idea into Reality,' Berkeley, April 22, 1972," and is appended on page 132).

QUESTION: Cy, it may be an unfair question because it's speculative. Do you have any feel for the prognosis of legislative action in the next few years on prison libraries?

SILVER: I have no feel and my understanding is that this afternoon you will get some answers from Jonathan Lewis of Senator Petris's staff and Willie Brown of the Assembly Ways and Means Committee as to what answers there may be with regard to what may develop. It doesn't make any difference whether or not the California Legislature acted; because of the court order of Gilmore there are going to have to be law libraries in California prisons, regardless of what the Legislature thinks. You have to get the money from some place. I think they are getting it from the Law Enforcement Assistance Administration.

QUESTION: Mr. Silver, do any of the correctional institutions in this state have librarians in their law libraries and if so, how much training do they have for these positions and how much leeway do they have for helping prisoners?

SILVER: Briefly, every prison library has a professional librarian position. San Quentin because of its size has two. Four of these are professionally trained librarians; the others are high school teachers or correctional officers acting as librarians. They have a great burden in the variety of responsibilities placed on them. They are primarily involved in an educational program rather than a conventional library program. Mr. Tissue, who is in charge of that, will speak later and will, I think, amend whatever gross generalizations I am making.

QUESTION: Mr. Turner, has the Court put any time deadline on institutions in providing legal services? Or is there any way of saying when they'll get around to doing that?

TURNER: There was a deadline for compliance with the original order. And compliance was simply submitting new regulations saying: "Here's the plan," or "Here's what we'd do." Since the prisoners are objecting to what they said they were going to do, the Court hasn't yet ruled on it and hasn't directed the State to do what they said they would do or do something more or do something different, so there is no deadline as it stands now. But it's in the Court, and I suppose that in a matter of a few months there will be a decision.

QUESTION: The Gilmore decision was not related only to law books. It also said there was a provision for law students helping prisoners and for other kinds of alternative services that might serve to meet the needs. Is the State definitely going into the law book thing or are they going to take one of the alternative courses?

TURNER: The State has opted out of any of the alternatives of law students, para-professionals - any of the alternatives that were suggested by the Court - and has limited itself to books.

QUESTION: Are they stopping law students from going into the prisons to help prisoners?

TURNER: No. They're not stopping anything. It's just that they're not committing themselves to establish new programs or to make the ones that have been started into real programs.

QUESTION: Isn't that in violation of the Court's order?

TURNER: No. All the Court order said is to come up with a new plan for legal library service and stop the book-burning.

BARRY KRISBERG, Assistant Professor of Criminology, University of California, Berkeley

"The Criminologist's View"

Let me first begin with the criminologist's view of the prison and then move into legal law libraries. Although there are many library shelves filled with criminological wisdom about prisons, the net contribution of these volumes toward understanding the present state of the prisons is minimal. In part, this is because we have asked the wrong questions of the wrong people, usually the staff, and when we noticed there were inmates in prisons we were interested more in their sociological patterns than in anything else. Few of us studied the prisons

per se. We were always interested in using the prison as a metaphor for something else: the prison as a microcosm of society, the prison as a study in total institutions. But from all our work and from a wide spectrum of ideological views, one stunningly simple and consistent finding emerges: that prison represents an artificial human situation which results in systematic destruction of one's capacity to have a sense of humanity. Happily, on this point criminologists find themselves in agreement with more eloquent and perceptive men such as George Jackson, Malcolm X and Eldridge Cleaver. I submit then that the policy implication of all our work is that prison reform can only mean a bulldozer and crumbling walls.

If you still believe that some temporary measures are possible, I ask you to consider such things as the juvenile court, the indeterminate sentence, and the adjustment center. Each of these started as a "humanitarian reform." And each one of them now is under tremendous legal and humanitarian attack for the injustices practiced in their name. Now with that framework in mind, let's take a look at the legal libraries question, from what I would like to call a careful, if paranoid, perspective.

The first question that comes to my mind, and I think in part that Mr. Turner answered this question, is who's likely to use these libraries? Based again on figures on reading level and educational level of inmates, the numbers are likely to be small. I spoke to members of the Prisoners Union. They also suggested that the number of inmates who have access or have the skills to reach legal materials is quite small, and that while some of the legal materials can be transmitted through an oral tradition, it remains a kind of limited

objective. If we are serious about prison libraries, we must talk about legal education as well.

Now what are the likely results of putting prison legal libraries in various state prisons? Since most inmates were sentenced after negotiated pleas of guilty and did not go through a Perry Mason-like trial, and virtually 80 percent of inmates around the country are there as a result of pleas and not trials, we should not expect that legal materials are going to result in a vast number of overturned convictions. There may be some, but it's not on any tremendous scale.

Even further, certain inmates, I suspect, although I'm not sure, are still denied access to this material. For example, I wonder if inmates in adjustment centers or in some form of solitary confinement have access to legal material. Often these are the inmates who probably need access to legal material more than anyone else.

I think the most important development in terms of legal materials is related to new developments in the area of the rights of convicted felons. And this may be the place that prison legal libraries may play the most important role. Again, by way of example, I discovered that right now if an inmate at San Quentin is going through an internal discipline procedure or if he feels he is being mistreated in some way, he does have a right to draft a letter to state officials, and he has the right to retain a private attorney. But he can't, for example, call the Marin County Public Defender's Office or the Legal Assistance Office and ask for a lawyer to come over. If he doesn't have the money to retain a private attorney, he can't get a member of the Bar.

What I'm really saying is that the term "jailhouse lawyer" may take on quite literal meaning in the future. We will have lawyers of the jailhouse who will be knowledgeable about emerging laws concerning the jailhouse. What are the consequences that flow from that? First, administrators of prisons are likely to resist these efforts and are likely to attempt to subvert them in characteristic kinds of ways. Why? Simply because it reduces the amount of administrative discretion which they can employ. Administrative discretion is critical in the operating of a prison or any large bureaucracy.

Second, I would expect some resistance from treatment personnel, particularly psychiatrists and social workers, because notions like due process and equal protection are not from the language of therapy and are quite inconsistent with the kind of medical model that most therapists use. So again, if we are serious about legal material in prisons, we'll provide librarians and we'll provide people teaching legal education.

But let me consider what might result from this. I submit that one serious possible result could be that we place the entire burden upon inmates to advocate for themselves, and that legal material in prisons could provide clear justification for us to forget the inmates. Having given them the appropriate ammunition or tools, we don't have to bother about inmates any longer. And even further, I wonder whether or not this kind of movement might give the state grounds to take lightly its responsibility as enunciated in the Supreme Court decision of Gideon v. Wainwright, which is to provide legal assistance to indigents in the criminal justice system.

To briefly conclude: prison law libraries are fine. In fact, I submit that inmates ought to be able to read any book that any other citizen can read and that they should have access to legal education. But a piecemeal reform like this, I think, can produce the unanticipated negative consequences that other piecemeal reforms have put forth. Within a corrupt dehumanizing system worthy ideas are easily corrupted. There must be safeguards. Inmates can ill afford the luxury of humane librarians, social workers, psychiatrists or criminologists. There needs to be a constant attention to the rights of prisoners. And that's the only way I think we can conceptualize one piece of a program.

And most importantly, I think, inmates and ex-inmates need to be key participants in any kind of planning or development of such programs since it is really their interests and their needs that we're speaking to and we cannot paternalistically apply our values or our wishful thinking into matters that really impinge into their lives most directly.

CHARLES HULL, Assistant to the Director on Administrative Procedure

"The Correction Officers' View"

I'm glad to follow Mr. Krisberg because I want to confirm many of the bad things he says about prisons. They are indeed a destructive process and need to be torn down by bulldozers. The administration of the State and the Legislature have in recent years taken recognition of that fact in their promise to close down San Quentin and the pressure that came up at the same time to do away with Folsom. I'd like to

submit that the destructive process works on staff as well as inmates. I don't know what kind of psychological structure led the older generation of prison employees into that kind of work, but once they found themselves there they became as regimented and fixed in the negative ideas that go with a prison as the inmates were, and to such an extent that it's going to literally take bulldozers to change a lot of the old attitudes. Thankfully, the top administrative staff in most of the institutions and certainly at the departmental level are at last becoming sensitive to the needs of the public. Although they were nominally public employees for a number of years, they went on the feelings that the public doesn't want these people among them, so our job is to keep them confined and let them out when the Board says they get out, and nobody really cares what happens to them in the meantime. That's all swinging around, we're glad to say, but it's going to be slow. It's going to take the destruction of San Quentin and Folsom, the building of smaller institutions, probably another generation of recruitment, and the retirement of a lot of the old guard before all of these ideals we have been talking about can be achieved.

I'd like to speak to the Department's viewpoint on complying with the Gilmore decision. Our stand is we are not lawyers, and we are not legal librarians, but at least in principle we want to do all we can to facilitate inmates' getting some assistance with their problems that relate to legal or human rights. So to that end we have, as you heard earlier, recognized some of the Court's decisions that inmates should be able to help each other with their legal work. We've tried to increase the accessibility to whatever limited law libraries we have.

We have provided typing service and materials for inmates who do not have these resources themselves. We've provided free mailing. We've tried not to delay administratively the time span from the time the material leaves the inmate's hands to the time it gets to the courts. And although I'm sure we're going to get a lot of argument from selected law students and lawyers, we also try to facilitate access to counsel.

I don't want to talk about San Quentin today, but we feel we're on the right track and we're trying to improve things in those directions. We took the stand in response to Gilmore of proposing a basic law library for each institution, a uniform library with one circulating library with the less frequently used volumes to service all the other institutions, because we haven't seen a plan that involves lawyers or law students that we think we could furnish uniformly throughout the Department. Now there are many law school student projects going on. About half our institutions have programs worked out with law colleges where students come in and assist inmates with identifying their legal problems and giving them counsel on how to proceed with getting into court, although these law students themselves can't take the inmates' cases to court.

Also, in at least one institution, Vacaville, the Solano County Defender, Paul Ligda, has a program going where he provides assistance to inmates on matters other than those that deal with problems in prisons or their convictions or appeal. They do go in and talk with inmates who want to file writs against the staff for treatment or whatever their problems. He's having some problems providing enough service because of money limitations, which is our problem too. At the present time we don't propose departmental sponsorship, which would mean going

to the Legislature and getting funding for a department-implemented and managed program that involves lawyers or law students. But we will do all we can to cooperate with any programs that are brought to us.

We opposed the bill that came up during the last legislative session to mandate a law library for inmates because we feel that things that can be done in administrative good faith should not have to be legislated. We feel that the public can bring enough pressure to bear on administration and get the results they want without having a law that would restrict the library to certain books, and that means that every time you want to change the library or the procedures involving it, you have to go back and have the law changed. We would prefer not to get into that.

Our biggest objection to the bill was the funding source. The Inmate Welfare Fund is the money that belongs to the inmates, which we keep in trust for them. We don't feel that the entire inmate body would benefit from the law library. We don't know what it would be on a percentage basis but it would be ten to 20 percent who would make an intensive use of the law library. The great majority of the inmates would not have a use for it or would not make use of it, and yet under the bill as it was proposed all of the inmates would have been hurt by the funding source. The profits that come from investment of the inmates' fund in certain legislatively controlled investments and through slight profits that come from the canteen where they buy their ice cream and tobacco and things like that are used to provide benefits to the general inmate population. This includes the renting of films for the movies they see and buying certain recreational equipment that the general funds budget can't afford to buy. They buy all the fiction books for their libraries.

They buy their own television sets. If you took their money and bought law books with it, these other programs would have to suffer.

Now our attitudes may change in this respect because, thanks to all the pressures that are coming about, the climate for increases in the departmental budget is getting better. For the first time we've been faced with being threatened with more money than we asked for instead of having five or ten percent lopped off a very basic, hardly adequate request.

I probably should speak to why we haven't made budgetary provisions for inmate law libraries. Part of it is the fact that the general inmate population as individuals would not benefit from it directly, and the other part is that it's a matter of priority. We feel that the inmates are not without legal recourse. They can see lawyers. They can send anything they want to the courts. I think we've even quit reading what they send to the courts. For a number of years we did that, and I guess it's been about five years ago that we got off that kick. Now anything an inmate wants to send to the court goes. We don't care what it says. We've matured to that point. We're not afraid he'll say something bad about us. But we do feel he has access to the court within the limits of our budget, what the Legislature has generally recognized as our program level. There are more urgent problems such as adequate staffing and protection against the violence that is growing in prisons - violence against both staff and inmates. Our medical care is very marginal. We're trying to improve that, which takes much, much money. We're trying to improve our psychiatric resources. We're trying to set up units to get the too-large number of men who have been confined for a

long time in adjustment centers back out into general population programs where they'll have the hope of getting a date and getting out. We feel that these are of higher priority than providing a law library service which only a few inmates would have either the intelligence, the skill or the ability to profit from.

EUEL TISSUE, Assistant Chief of Education, Department of Corrections

"The Correction Officers' View"

I'm not a lawyer and I'm not a legal librarian, but since a part of my job on the Director's staff is to work with libraries in general in the Department of Corrections, I'll talk a bit about our libraries and what we would be faced with in any kind of a law library set up in them. I think I should probably make a better contribution to this group by doing that and confining any remarks or any questions about the law library itself to Mr. Hull, which will be in his general area.

I suppose the first prison library that was provided for prisoners back in the early days of penitentiaries was the Bible, and to the best of my knowledge that was about what it consisted of. I think we're a little better than that today. I don't know how many thousands of volumes we have in the Department of Corrections and I'm certainly not here to defend libraries because they're not good, and I'll tell you some of the reasons they're not good. But we have tried within the funds that we have to provide a general library that the total inmate population could read and understand and use.

Now the statement was made earlier this morning that about 30 to 40 percent of the inmate population in prisons were functional illiterates. This is not true if you term a functional illiterate as we do in the Department of Corrections: that's any person who reads below a fifth grade level. The total inmate population in California right now who would meet that category would be about ten percent. The average reading ability of inmates in the Department of Corrections today is about the eighth grade. And this extends all the way from the totally illiterate through the doctorate level. So there's a wide range of people there that we're trying to serve.

I've been on my present job in Sacramento about five years, and there has been a tremendous change in administrative approach to libraries in that time. When I came there we had an approved list of about 800 magazines which would be permitted in the prisons; I found that some of them hadn't been published in the last ten years. Nobody really knew. Somebody would come along and get one added and we would add another one and another one and never bother to go and check that list each year. So when Director Procunier came along and we talked with him about this magazine list and the unmanageability of the thing plus the outside pressures that were coming in on us, he just wiped the whole thing out. We have no magazine list now and we're all tremendously happy about that.

The literature that can go into prisons today is almost unlimited. I walked into Folsom Prison the other day and went down in the education section there, and there's one of those big fold-outs from Playboy up on the wall. I can tell you ten years ago that if any correctional officer

had walked in that education building and seen something like this up on the wall, not only would the inmates have been in trouble but also the teachers and the people who work there. So many of the things we were shocked by in prisons a few years ago we're no longer concerned with. I personally feel that we're no longer protecting inmates by limiting their literature. Most of them have lived lives far beyond what you and I know and there's not very much you're going to shock them with. In many cases in this area they're very mature people indeed, so we don't have to worry about that.

How do we fund the general libraries? Well, there are two ways: the non-fiction books are provided for in the general budget each year, and right now it runs about a dollar per inmate per year in these libraries. The fiction books and magazines have to come out of the Inmate Welfare Fund, and there's so much drain on that thing right now that you know if you put one more thing on it it's going to break the camel's back. This fund comes out of the profits made from the canteen and the other things that the inmates spend their money on. That too runs about a dollar per inmate per year. Surprisingly enough, the way we buy books it stretches much further than I could ever imagine that it would be stretched. I get lists of books coming in from the various institutions on what they're buying, and it seems to me that the librarians cover a lot of ground with the little bit of money that they have.

We have been lucky also in the fact that we have a close tie-in with the State Library. We give them fits sometimes because we impose on their limited funds by asking for materials from the State Library that I feel sometimes they can ill afford, but they have been very, very nice about it indeed.

We have a bit of controversy about the staffing of libraries. At each institution we have a position set up for a librarian; it's in the budget for a librarian. For a long time we had a great deal of difficulty finding librarians who could or would work in prison. I don't think it's a secret to you that most librarians up until now have been women. With the setting in San Quentin and Folsom and some of the other things and the hours that they work, the Department has considered it not safe for women to work in those areas and during those hours. The libraries with the exception of two places are staffed by either teacher-librarians or librarians. At San Quentin we have a teacher-librarian and we also have a correctional officer who works in there. At San Luis Obispo, California Men's Colony, a librarian who is a professional librarian had a heart attack about a month ago, so we had to put someone in it just to keep the library open. We put in a correctional officer just to oversee the place until such time as we can find a librarian.

The State Personnel Board gave us permission to put teachers in the libraries about ten years ago. I'm hoping (and I've been working with the State Library on this during my tenure in Sacramento) that we will see the time when we can staff every one of these prisons with librarians and not be forced to use teacher librarians. We have one librarian at a big institution and we try to keep the library open seven days a week where we can. So the librarian really becomes more of a manager than he does a librarian, and this is one of the aspects of prison libraries that disturbs me very much; he's busy just housing the books and keeping track of them. We keep the library open as much as we can; we let

inmates serve in those libraries part time, being supervised by the librarian or a teacher-librarian as the case may be. But you see that unless we overhaul the whole library system, it's going to require some major rearrangements so far as our libraries are concerned when we put law libraries into these institutions, just for the matter of managing books, if that's all we're talking about.

I'm not going to offer any opinions on what we should have in law libraries. I haven't the faintest idea; I don't know anything about law books. All I could tell you about a law library if it comes into our institutions is that if I'm still on the scene I will help to implement whatever decision is made, and whatever the director and the Court say should go into libraries. It would then be my function to help implement that program into the Department and try to make it work.

I have been concerned about whether or not we were getting the most out of our libraries with just the monies that we have. About three months ago I asked Mrs. Leigh, the State Librarian, to help set up an outside committee composed of herself and whomever she chose to serve on it to take a look at our overall library operation. I hope this would include the law library, assuming we're going to be told what we must put in there. So she got David Sabsay and Stefan Moses and Winifred Swanson. They have spent about three months looking over our total library operation, supposedly coming up with a report sometime within the next month making recommendations of what we might do to improve our library operations. Whether we can follow their recommendations or not we don't know, but I hope that we will be able to get some idea on how we might make these libraries more meaningful for inmates, especially in light of what

we're going to have to do in terms of law libraries because I assume that when law libraries come along they will in some way be tied administratively into the libraries that we now have.

DEAN GREGORY, Librarian, Folsom Prison

"The Prison Librarian's View"

I sat down yesterday afternoon with the best of the Folsom jailhouse lawyers and with the brochure of the conference I made up a few remarks there with their approval. Will law books in prisons eliminate the need for lawyers? Despite the many important cases won by prison lawyers, attorneys obviously cannot be replaced entirely. Many inmates do not have the ability to do their own law work. And further, inmates are convinced that courts pay more attention to writs, whatever their quality, when they are filed by attorneys as opposed to a prison or jailhouse lawyer's writ. And often good jailhouse lawyers use attorneys only as figureheads to file the writs they have written themselves without further editing.

What good is a jailhouse lawyer? He serves a very considerable purpose in the prison for, as we know, most inmates have no recourse to hire attorneys to seek post-conviction remedies and to challenge institutional rules and practices. Jailhouse lawyers with the most limited library resources have won significant cases. John Van Geldern, who was also party to the Gilmore v. Lynch case, wrote an article for The Conspiracy enumerating a number of very important cases - landmark cases -

that jailhouse lawyers have been able to win in the court. In my observation the best of the jailhouse lawyers appear to be as good or better than the average attorney who is not specialized in criminal law practice.

What constitutes a meaningful law library? Jailhouse lawyers say "meaningful" can only mean that they have access to the same materials as their adversary and with the same timeliness. Timeliness is a very crucial point in law work in prisons because when you have ten days to file an answer and need a book from the State Library, it's impossible to get the book in ten days. At Folsom we have a legal typing pool that types writs for inmates, typed by other inmates who are assigned for that purpose. You cannot get a writ through the pool in ten days. As far as the librarian is concerned, he wants to provide whatever material the patron asks for. We cannot decide whether this law journal article is germane to this particular inmate's case when he says, "I must have this." We must be able to provide it if we are going to provide meaningful law service.

Aside from needing California and federal materials, prisoners in California need access to out-of-state law materials. This is probably the most difficult area that we will be involved in. Ancillary to the law library itself the copying services and the typing services should perhaps be under the same jurisdiction in the prisons as the law library itself. Also we should not neglect the county prisoners while we are here because there people, many of whom are much less sophisticated in law or not sophisticated the least bit in law, are in grave need of both legal library services and the services of attorneys or para-professionals of some sort.

RONEY NUNES, Ex-convict and jailhouse lawyer

"The Prisoner's View"

To begin with, I'm not much of a speaker. As a matter of fact this is only the second time I have stood in front of a crowd to speak. I was prepared to make just a few comments on the prison law library, but I resent the fact that the Department of Corrections is using this platform to tell you people misrepresentations of facts.

I spent 13 years in the prison system, nine of them in Illinois, with several years in solitary confinement because back in those days I believed that the inmate has a right to access to the courts. I voiced that right in written communications to the court and to legislators, and at that time nobody paid any attention to the prisoners so I was locked up for seven years in a solitary confinement cell. I was allowed five minutes out each week for a shave and a shower. I filed many complaints over the years. The last complaint I filed on toilet paper. Because they wouldn't permit me to have a pencil to write, I had to bite the end of my finger to draw blood and use a broom straw to write a petition for habeas corpus to the United States Supreme Court. That Court ordered the State of Illinois to review my case, and finally Illinois decided I was innocent. As a result of subsequent litigation in the Court, I was awarded a sum of money last year that makes me financially independent. Now I can spend my time, seven days a week (I have been doing this since my release from the California prison system last December) attacking the California Department of Corrections simply because they are a vicious animal. If you listen to one side of the story, then obviously

you don't know the other side and you're going to believe it.

It is unfortunate they selected Dean Gregory here, because he is the only prison librarian I really can't attack. Dean Gregory and I have never met, but he spoke of John Van Geldern, and John Van Geldern and I have been in the prison system for a good number of years. Van Geldern raised so much hell with his writings that they transferred him to the California Men's Colony, and then we teamed up there to attack the prison system to compel an adequate institution law library.

Dean Gregory in all sincerity has attempted to help the inmate. We have 13 prisons in the state and 28 prison camps (camps ranging from 80 men each on up); we have today something like 20,000 prisoners in California; we have 40,000 persons under the control of the Department of Corrections, parolees and prisoners, and as some of you know, California is the third largest penal system in the world, only behind Russia and China.

In Sacramento recently I was attacking our yearly budget for prisons which is coming out of your pockets through taxes. Our yearly budget for this year is $112,000,000, but actually the figure will be closer to $135,000,000 to support our Department of Corrections. In 1955 our budget was $55,000,000 and we had only five prisons.

There was a comment earlier about Folsom and San Quentin being closed, simply because Governor Reagan thought that it would be politically expedient to mention closing San Quentin because of the deaths we've had there. San Quentin will not be closed. At another hearing I recently attended in Sacramento, Department of Corrections Director Ray Procunier stated that we have 2,000 men in San Quentin. Out of 2,000

men, 1,500 men are malcontents. I was classified as a malcontent simply because I felt that I had the right to voice my expressions in written form. He claimed that they're hard-core - 1,500 men - asking, where are we going to put them? We only have 500 extra beds at Folsom (they call them beds, but it's cells and dungeons at Folsom and elsewhere). There's no place to keep them, so we've got to keep San Quentin.

They're not going to close San Quentin. If they do anything at San Quentin they'll maybe rehabilitate one of the two buildings in use as an adjustment center and adjustment centers, as you know, have been the sore spot in California for years: where they take men and keep them locked down for years and years and treat them like animals. You're skin-checked every day; and I mean by skin-check that they completely strip you if you want to go out in the yard for five minutes for some fresh air, which you're entitled to once a day, and they'll look completely over your body and make you stoop over and look up your rectum - it's sort of a degrading thing just in order to go out and get a little fresh air and sunshine. You're allowed a pencil no more than two inches long inside the adjustment centers. You're subject to constant harassment. When George Jackson was killed - and others were killed - the system itself caused it. You can't imagine the hatred and the bitterness that develops inside. I've spent time in adjustment centers - I know what they are. I've had my life threatened by California guards and been beaten inside the Illinois adjustment centers. Prisoners there hate the guard so much they will take their flimsy mattress - it's paper-thin - and tear it apart and, using a can sometimes used as a toilet, boil that water and

when the guard that has been tormenting them comes by, toss the water on top of the guard. Then the district attorney decides whether to prosecute the prisoner under our death penalty statute. Last year, while we had the death penalty, a prison sergeant threatened to kill me. He disliked me because of my writings on needed prison reforms. At first he offered to fist-fight me. Fortunately, I was able to retain my emotions even though I wanted to strike him. I was a life prisoner in on a robbery. The majority of prisoners in California are life prisoners. Had I struck this sergeant as a life prisoner, I would have incurred Penal Code 4500, which deals with a life prisoner striking a person in the pri[redacted] I would have ended up on Death Row simply because I'd lost my emotional control and struck the prison guard.

Dean Gregory is perhaps the best librarian we have in our prison system. He says that prisoners want lawyers (as opposed to jailhouse lawyers). That's true. Prisoners will take lawyers in preference to a jailhouse lawyer simply because they figure, if a jailhouse lawyer is in jail and he can't get himself out, how is he going to get anyone else out? But we have judges and lawyers in jail too - and they can't get out. Prisoners would prefer to have lawyers, but, unfortunately, lawyers can be incompetent. I don't mean incompetent in intelligence. They're not versed in criminal law. They're not versed in the problems that we have. As a matter of fact in <u>In re Greenfield</u> a prisoner struggled for about three years to prepare a petition to show that his court-appointed trial lawyer was incompetent and overlooked a basic point of law. The Appellate Court reversed the conviction and Appellate Judge Friedman

was critical of such lawyers. (Incidentally, that's why we needed Senator Dymally's Public Defender Bill, which Governor Reagan vetoed last year. Once a Public Defender's Office is set up, we will have a trained attorney in each prison who can utilize the jailhouse lawyer to assist the prisoner more effectively.)

If we wish to obtain law books from the State Library, it takes three weeks to six months to order and receive a law book from Sacramento. First you have to request to go to the prison library and ask the librarian for a form which is filled in. That takes about a week to be processed out of the prison and mailed to the State Library. There, Mr. Cy Silver or his assistant will search to see if they've got the volume. If the volume is out and more likely it is, then the card is sent back to the prisoner indicating the unavailability of the volume, and then it's another process of months to never. Some books are never available. For example, we can't have access to any books that deal with other states. Some points of law advanced in California have not been litigated in this state, so we have to turn to other states and review their law volumes. But prisoners can't do that simply because they don't have access to out-of-state books.

There are perhaps four sets of law books for 20,000 prisoners. The books are generally old and mutilated. The State Library attempts to repair mutilated books and put them back in circulation. In a six-month period an inmate may order 100 volumes. That really is not a large amount although it may seem so to the average person. But out of 100 volumes you'll only get 15 or 20 books in a six-month period, and that's not enough. You can pick up any Attorney General's brief responding to

any petition filed, and you'll find that sometimes he'll cite two to three hundred cases, and sometimes only twenty or thirty. If he requires that many volumes and that many citations from different volumes, what can the prisoner do with one or two cases which may be obsolete or may have been overruled or modified? We don't know unless we have current law volumes.

In November they transferred me from the Men's Colony at San Luis Obispo to Chino in preparation for being paroled. First, I want to make a comment about that parole. I would have never been here to speak to you today had not it been for Mr. Jonathan Lewis, who is an Administrative Assistant to Senator Petris. The Parole Board refused me a parole simply because I would not make an admission of guilt during my four years of imprisonment and therefore I was not "rehabilitated." I didn't want to endanger any future civil litigation by making a false admission of guilt to the prison officials when I contended I was not guilty. They generally will not release you unless you make some admission of guilt that you committed a robbery, a burglary, or whatever you may be in for. Senator Petris finally stated that he was tired of the Parole Board's "infamous doubletalk" on their reasons for not granting me a parole. The Parole Board then held a special hearing; apparently they don't want the politicians breathing down their neck. Three days later, after they'd given me parole, I was on an airplane headed for San Francisco. So you see, the prison system can do things practically overnight, whereas they'll say it takes years to accomplish anything, to get better medical attention for the prisoners and so on.

When I was transferred to Chino Prison last December I encountered two rules immediately. One was that you cannot criticize our state laws, our public officials and institutional officials. The same rule was in effect at San Luis Obispo when I arrived there the year previous to that. I brought it to the attention of State Assemblyman Sieroty and Paul Halvonik of the American Civil Liberties Union. With their help I caused those rules to be nullified. There are legislators who are concerned about human beings in prison because we are human beings. Ninety-eight percent of us are going to return to the street and we don't want people to come out like animals or embittered by the prison system. I want to be able to live on the same street with you. I want other prisoners to come out and be able to be amongst you without you being leary about "Well, he's a convict, he may harm me" or something. In television many of us are pictured as animals and we're certainly not. I'm not married, because I've never been out on the streets long enough to find a wife, but most of us do have wives, children, mothers and fathers and we are human beings. Some of us have transgressed the laws and we are being punished, but there is a world of difference in punishment. You're not going to take a prisoner and treat him like a dog every day in the week and expect him to come out "rehabilitated;" that is really no word at all but the Department of Corrections likes to use it.

The second rule violation at Chino had to do with the California Weekly Digest. The Department of Corrections formulated a rule years ago that each institution is required to have eleven different volumes in the library - that was our prison law library and still is our prison law library today - eleven titles for each institution and no more. A

lawyer's office needs anywhere from 300 to 600 volumes for civil matters unless he's using the county law library system or the state public libraries. Prisoners have civil matters: we have workman's compensation, we have insurance, we have adoption, we have civil suits pending for injuries perhaps that we've incurred prior to coming to prison, and we have many litigations in civil matters besides criminal.

Chino is usually held up as the minimum security showpiece of the California prison system. At Chino there are women walking in and out, and the prisoners are in a trusted position. We've never had one person murdered in the 30 years that Chino has existed. The second or third day after I arrived at Chino I naturally went to the library to see what law volumes were accessible to me. One of the eleven required books is the California Weekly Digest. It's a very useful tool for the prisoner because it gives a summary of all major court cases that may be pertinent to civil rights, to humane treatment in the prisons, adequate medical attention. That book wasn't on the shelf.

I inquired of the librarian who had been there almost since Chino was built. He is a reasonable man, a wonderful person to talk to, but he will not buck the system. He will do exactly what they say, and he will never speak up. He's like a robot, like the majority of the prisoners are. I asked him, "If the Director of Corrections requires that particular volume to be in the library, why isn't it here?" He said, "Well, I've ordered it from the Accounting Office." I made inquiries in the Accounting Office and they told me just to mind my own business, it's not my concern how the Accounting Office operates. So I petitioned Justice Peters of our State Supreme Court, who sent me a personal letter to

the effect that the law book situation is being reviewed now but to respond to him later if that particular law digest isn't put in there. Now one of the Department of Corrections officials has said they do not censor mail, but they do. When officials censored Justice Peters' letter, they immediately put in the law volume that was supposed to be there. So you see, they'll do whatever they must.

The California Department of Corrections says that "We're doing this or that; we're giving psychiatric care for the prisoners, better medical attention." Let me tell you that the Department of Corrections has never done one single thing for the human beings that we've got in the prisons unless they were forced to do it by legislation. They will oppose every bill to help prisoners. They come up with fantastic stories to the legislators why we don't need the bills and they'll say, "We'll do it" - on their own, but they never do it. They keep saying, "We want to upgrade our psychiatric care." We have at the Men's Colony at San Luis Obispo 2,000 prisoners. Fifteen hundred of the prisoners are considered mentally ill or emotionally unstable. Hundreds of them are walking around in a drugged condition every day. They fed them Prolixin, and Prolixin, if you've ever studied the literature that comes with it, indicates it may ruin your brain and nerves. How long have they had those 1,500 prisoners there? The California Men's Colony has been open since the early 60's. At Vacaville, where we have a staff of doctors, you always hear about what good is being done for the mental prisoners, but has anybody ever inquired about the prisoners that are locked up in a wing called S Wing where they've been brutalized by guards, have been starved. If

it was your own brother, your son, in that prison and you walked in there and saw him in those cages, you'd never recognize him. Who knows about it? I've watched guided tours come through the prisons. On a guided tour you only see what they want you to see. You don't see the degradation, you don't see the prisoners being assaulted, you don't see them subjected to other cruelty and inhumanity.

Education - what education? I've studied the education system. As a matter of fact I went into the office of a program administrator in San Quentin two years ago and stole his files just so I could see how much money they were appropriating for the inmate's vocational training, to teach him something he can use when he gets out. It cost us $5,500,000 every year to run San Quentin. Out of that $18,000 was allotted for vocational supplies as opposed to over $300,000 in wages to so-called vocational instructors. You could go out and shop-lift $18,000!

Dean Gregory says in every prison we have a typing pool to prepare prisoners' documents, which is true, but what about the problems? There's a door right there, but it's a hell of a long way from here to there, and I can run into a lot of obstacles. First, you must prepare forms asking permission to have your legal papers typed, then the guard reads the legal papers over to see who it is against, and if it's against the Department of Corrections he'll get it immediately typed and a copy sent to the prison administration so that they can see what the prisoner is doing. That prisoner is generally singled out and harassed thereafter. Guards used to walk around San Quentin with a black book and they'd have pictures of the malcontents and the agitators.

I've never struck a prison guard in the 13 years I've been in prison. I've never even cursed one, though I would have liked to. I've never done anything that would put me in a position where they could isolate me for prolonged periods of time. I learned that lesson in Illinois.

When I was imprisoned here in California I spent the first year building friendships with legislators, writing about why we need legislation and so on. And then I turned my attention to the Department of Corrections and attacked them for the vicious system that they have. By then the Department of Corrections was hesitant to tangle with me because I had too many people who would look in on me. Assemblyman Sieroty, Senator Petris, Assemblyman Vasconcellos, and many attorneys, so I always had some help if the Department of Corrections got too far down on me. They just left me alone; then it was too late. I had set up my own printing process in the prison and constantly ground out material about the prisons. I burned out four typewriters in the four years.

In the first year I was there the prison officials refused to let me have my personal typewriter because I had the reputation of being a jailhouse lawyer, and in 1968 jailhouse lawyers were frowned upon. An example, John Van Geldern, who is perhaps one of the best jailhouse lawyers we have in the system, was punished a few years ago in Folsom for having a copy of the United States Constitution in his cell. If you had the Bible in there, the prison officials wouldn't bother you. Yet the Bible has more murders, sex stories, whatever you want, in there, but they don't see anything wrong in it; but if you had the United States Constitution in your cell you'd be punished. In San Quentin no more than

two years ago, I was in the library reviewing a law book. The prisoner sitting right beside me asked me some point of law. I responded, and I was given a disciplinary report and punished for "suspicion of giving legal advice." Prisoners were not then allowed to speak to each other about law. If someone asked me, "Do you know what the Penal Code Section is for burglary?" I couldn't respond without fear of punishment. Then the 1968 Johnson v. Avery case came down from the United States Supreme Court, saying that the prisoners have a right to assist each other. But Warden Nelson, with the approval of our Director of Prisons Procunier and our Department of Corrections spokesmen, supposedly all reasonable and benevolent men, said they were going to interpret the United States Supreme Court decision to mean that "all you can do is talk about law, but you can't handle another man's petition." Now if I'm going to assist a prisoner and he's got his transcript, how am I going to know exactly what happened in his trial if I can't hold his transcript in my hand? So to suppress and obstruct the prisoner the Department devised the rule that you can talk all the law you want and we won't punish you for it, but you cannot handle another prisoner's law material or his petitions or his letters or anything else of legal nature.

We had to take the rule to the State Supreme Court - it was In re Harrell. Three prisoners were on that petition. One of them, Howard Ingram, who is sitting here in the first row, was in prison for four years because he never stopped advocating his belief that use of marijuana is not harmful and his right to receive various publications. The prison officials responded by keeping him four years where ordinarily possession of marijuana or sales of marijuana to a friend would only be an 18-month

confinement. He spent four years in prison simply because he wouldn't change his views. Coincidentally, the United States government recently released a document saying that marijuana is not as dreadful as people have painted it to be, and I don't think it is.

Finally, I do want to point out that Mr. Gregory did mention that they do have a photostatic copy machine in Folsom. Now we need a photostatic copy machine in every prison law library simply because if a prisoner has an important document, particularly an affidavit by an outsider whose statement has some bearing on the man's guilt or innocence or punishment, he does not want to lose it. Prison officials are notorious for losing copies of legal papers, particularly those being mailed out. Incoming mail many times won't be suppressed, but going out they mysteriously disappear. If we had a photostatic copy machine inside the prison, the prisoner could have his document photocopied, then he'd have copies to protect himself. If we had a photostatic copying machine, some prisoners wouldn't have to carry razor blades in their pockets and, when nobody's looking, furtively cut off the pages of books from the State Library because it's a vital case and they need it. The prisoner is selfish in this way. He may give it passing thought that someone else may want to review the decision but he's hard-pressed too. He feels he's been illegally convicted. He knows he needs this decision and if he doesn't get hold of it now it won't come back for another six months if ever. So he cuts out the decision and the book goes back to the State Library in Sacramento for repairs and it may be out of circulation for months. If we had a photocopy machine, a prisoner who desperately needed that case could study it in his cell; some prisoners cannot use

the law library, particularly if they work in industries. Prison industries are a $13,000,000 a year business and they're not going to let you take time out from your five-cents-an-hour job to go over there to study law books. They tell you, "You use it on the weekends." Now we have hundreds of prisoners working in prison industry; in tobacco factories, mattress factories, furniture factories, and you just can't get that many prisoners in the law library on the weekend. There may be a maximum of 12 seats in the law library section, so some prisoners can't get in there at all. We need a photocopy machine so the prisoner can photocopy the pages and then he can take it to his cell and study it.

County prisoners also need help. We have 57 counties in the state of California and only one sheriff to my knowledge is actually making an attempt to help the prisoners, Sheriff Hongisto of San Francisco. His attorney, Rick Sims, asked me in January to come up with ideas on setting up a law library for the county prisoners. I submitted a two-page list of law volumes I felt should be in a county jail level. I noticed in the paper the other week that Sheriff Hongisto was able to get a $12,000 grant from the San Francisco Public Library for a law library for San Francisco County jails. Now if a sheriff can go out and bum $12,000, the Department of Corrections, which has up to $135,000,000 at its disposal, can certainly put a law library in every one of their prisons.

JOHN WAHL, Attorney for the prisoners in Younger v. Gilmore

"The Lawyer's View"

Mr. Nunes, I'm sure that at this time the Department wishes they had paroled you much earlier.

You are primarily librarians, I understand, and other people who are interested in this specialized aspect of reforming some of the serious faults in our penal institutions. I'll raise a couple of questions and suggest a couple of problems about the case I had and still have the privilege of serving on, Gilmore v. Lynch: Robert O. Gilmore, Jr., an inmate who is now at Vacaville, I believe, and 85 other inmates filed an action late in 1966 (that was before I was a lawyer; I was admitted to the Bar December 23, 1966). These inmates filed an action for injunctive relief against a prison regulation limiting the numbers of law books and legal opinions which an inmate could have in his personal possession to one slip copy of an opinion in his own case, and limiting the number of law books and legal reference works that could be on hand in the prison library to eleven named law books. One of these is a law dictionary. There were no annotated codes, no federal codes, no federal rules for the federal district court, and yet there were rules for the Ninth Circuit and for the Supreme Court. How are you going to get to the Ninth Circuit or to the Supreme Court if you can't get through the district court? There were also no case reports.

As Judge Zirpoli observed when he wrote the Order Granting Relief in this case which came down May 28, 1970, before Corrections appealed

to the Supreme Court of the United States, "These works would offer meager fare to a criminal lawyer." I would hate to draw up a petition of any kind using that library. I could be sued for malpractice twenty times over.

The problem that I want to raise for you to think about is the problem of balancing the absolute commands of the Constitution, and I think they are absolute, with the practical ways for fulfilling those commands. The 14th Amendment commands that Equal Protection of the Laws is an essential if you're going to deprive an individual of life, liberty or property. It also commands that you don't do this unless you give an individual Due Process of Law, and Due Process of Law includes access to the courts. Access to the courts is not just the privilege of sending a letter to the courts. Access to the courts, and Gilmore stands for this, expressly and unequivocally means meaningful access to the courts.

I think it's a scandalous imbalance, and the word "scandalous" is appropriate, when you have the Attorney General's Office replying to writs as Mr. Nunes and many other inmates constantly complain about, citing a plethora of authorities, and the inmate has these eleven books and he can maybe pull out a citation to a case that may have been overruled or modified or changed. Perhaps the citation is in Witkin, which, as you know, has been supplemented every two years; and perhaps it is not in Witkin (I don't always agree with Mr. Witkin - with all due respect, and the courts don't - they change the law). Access to the courts means the opportunity to prepare and present a pleading which is effective, assuming you have the facts on which to base such a pleading.

Equal Protection of the Laws, the other principle on which Gilmore rests, means that if Jimmy Hoffa can go out and hire the battery of attorneys that he hired and get the results that he got, what's going to happen to Roney Nunes? Is this Equal Protection of the Laws? The Court held that it was not. The Supreme Court very properly affirmed the decision with two sentences, and that was a unanimous affirmation.

The problem that you as librarians may have to deal with is what is Equal Protection of the Laws? Obviously there are not enough lawyers to give a battery of attorneys similar to those that served in the Hoffa case to every inmate or to every person. We've taken a small step in this Order Granting Relief.

The Court ordered that the State of California rescind this eleven law book regulation and provide new law books and new regulations not inconsistent with the opinion of the Court. The Court suggested a number of ways in which the prisons would meet the inmate's legal needs. Books are, of course, one means. I submit that if you have books you have to have training to use those books. West Publishing Company agrees with me, so they're trying to sell a training program too. That's all right. I talked to their chief of library services at length, and it's a good program, because it's the only program. If they're going to make a buck on it, at least let there be a program for training in the use of these books.

Another way to meet the need is to provide counsel. How are you going to provide counsel? Well, one way you might provide counsel is to make every attorney, as a prerequisite to being allowed to practice law, give so many hours to a pro bono publico cause each year. Now, of course,

this doesn't meet the objection Roney Nunes brought up. There are a great number of members of the bar that I would never want representing me on a post-conviction matter or on any criminal matter because criminal law has become a very specialized field. Post-conviction remedies are even more specialized. Mr. Nunes is a specialist in post-conviction remedies. He doesn't know a thing about corporation law, but he happens to be a specialist in post-conviction remedies, even though he doesn't have a law degree. Many of the jailhouse lawyers are effective post-conviction remedy lawyers and it's amazing that they have become such with the meager fare that they have had to work with.

Law students can be provided, perhaps. There can be some kind of system whereby law students can be required to go to the prisons and counsel and interview inmates. But how would these law students react? Would they treat this as just a job to be gotten over with as soon as possible? I don't know. This is a practical problem.

In oral argument in the Supreme Court, Justice White asked me if it would be possible to write a pamphlet in conjunction with opposing counsel, Deputy Attorney General George Nock, which would be used to implement the Court's order granting relief. I said that it was theoretically possible, but that it couldn't be a pamphlet; it would have to be a loose-leaf bound volume that could be supplemented all the time and it would have to be somewhat extensive. It would be possible to use it.

There are a number of alternative possibilities for filling the needs which are recognized and are commanded to be filled by the Court's order granting relief in the Gilmore case. But are any of these means sufficient in theory to afford Equal Protection under the Laws? I don't know.

You're librarians. Think of a training program for use of these law books.

We can't go further than this decision now. It's not possible, and I don't know that it's practical. The Court said, "Come up with new regulations." The State has come up with new regulations listing a number of law books to be put in prisons. We're stuck with this kind of approach. We have objected to the list of law books. We have objected to the insufficiency of certain law books being put in the prisons. For instance, non-official reporters are being used, which causes a parallel citation problem. Most of the reports before about 1940 are to be kept in a central circulating library where you would have the same problem, perhaps not as aggravated but almost the same problem, as you have now in trying to get volumes from the State Library. You have a delay in getting these volumes. There are some nuts and bolts aspects of making these regulations which will be firmed up and implemented whenever the Court sets the date for the hearing on our objections to the regulations.

The broader question is, does this approach solve the problem of providing Equal Protection of the Laws to indigents, and if it doesn't, then what can we do to solve the problem? The inmate who files an action, a post-conviction action, perhaps an action under the Civil Rights Act of 1871, alleging that the prison authorities are depriving him of his civil rights under color of law or maybe a petition for writ of error coram nobis or writ of habeas corpus, has a long, long row to hoe.

I was appointed counsel in the Gilmore case right after I passed the bar in 1966. We did not get a decision in the District Court until May 28, 1970. Why? Because we had about a three-year process of appellate

review on a procedural point, a very important procedural point. We needed to have a three-judge court convened because, according to a certain section of the United States Code, if we'd obtained this order from only one judge, the whole order could have been thrown out, when it was finally appealed to the Supreme Court, on the basis that a single judge had no jurisdiction. The reason for that is that if you are going to enjoin a state statute, or a state regulation which has the force of law applying to all the prisons in the state, Congress has decided that you must have a three-judge court. This is to ensure that single judges aren't messing up federal-state regulations by enjoining statutes right and left.

There is an exception. The exception is if the matter that you're asking the court to consider is not a substantial question of constitutional law, then only a single judge is required. The State claimed that this was not a substantial question of constitutional law. And the judge agreed with them and denied the motion for a three-judge court and said, in effect, "Let's go ahead. I'll hear the matter." We had to appeal that because if he was wrong, and the State and the Supreme Court could always say that he was wrong later, then everything that he did was without jurisdiction. So we appealed and the Ninth Circuit reversed the judge and ordered a three-judge court convened. We finally got our order.

It has taken almost six years to get to where we are now, and I'm an attorney professionally trained to handle these matters. If you have an inmate doing something like this on his own, does he have Equal Protection of the Laws if he doesn't have the skill, if he doesn't have the

learning, if he doesn't have access to the indispensable tools that the Attorney General's office has when it represents the Department of Corrections?

QUESTION: To the Department of Corrections: does the Department of Corrections consult inmates when it has decided to oppose legislation about the use of the Inmate Welfare Fund for law books. Did you consult the inmates to find out if it was their wish also that this so-called Inmate Welfare Fund should not be used for the purpose of law books?

HULL: I don't know the answer to that.

QUESTION: Could you find out?

HULL: Yes, I can, if anybody wants to write to me in Sacramento for answers.

QUESTION: Mr. Tissue, will you tell us about the inmate library at Frontera, the women's prison?

TISSUE: We have a library at Frontera but we do not have a full-time librarian. We have a part-time teacher-librarian. That is not because we wouldn't like one but because the inmate population is not large enough to support it under the present rules.

QUESTION: What is the inmate population at Frontera?

TISSUE: It's about 550 now, something like that. I think the requirement for a full-time librarian is 800.

QUESTION: Is this the only women's correctional institution in the state of California?

TISSUE: Yes, and I would be the first to agree with you that in that situation we would dearly love to have a librarian.

QUESTION: Perhaps we could get a librarian if women would commit more crimes?

NUNES: A couple of months ago I wrote to the Superior Court that handles the petitions coming from the women's prison at Frontera, which is in Southern California. You have less than 600 women there, and in the last two years there have only been five petitions filed in the Court by women just because they don't know how. I've been in touch with many of the organizations that have visited women there. The women don't know how to prepare petitions, and they will not be given any assistance by the Department of Corrections. The Department of Corrections takes the position that every single woman that we have in the prison system was lawfully committed. Probably many were illegally committed.

QUESTION: What do you mean by "teacher-librarian?"

TISSUE: Teachers who have credentials under the State laws of California who also work in the library. The Personnel Board classifies them in this way. They're really teachers.

QUESTION: To the head librarian: who makes the decision that the Inmate Welfare Fund should pay for fiction and the general budget should pay for other books?

TISSUE: I don't know whether that's a state law or not, but again, if you will write to me in Sacramento, I'll send you the answer. I don't know whether it comes out of the Administrative Manual or whether it is a state law.

QUESTION: Now I'll ask another question. When was the last time the Inmate Welfare Fund was audited, and can you give me specific figures with regard to the proper way that this thing has been run because I haven't heard anything about that yet. Isn't this supposed to belong to the inmates themselves? Who audits it and who gets the report of that audit?

HULL: Up to this year the Inmate Welfare Fund was audited by the State Director of Finance's auditing staff at the same time the General Fund operations and institutions audit was made, which is every two years. I think you're getting at the fact that it's possible the inmates weren't aware of the results of the audit, I think that's more than probable. They didn't get a copy of it. It wasn't posted on the bulletin board or anything like that. I don't think it's made really public.

QUESTION: I would like to ask Mr. Tissue if the Department contemplates any re-evaluation of the position of women working in the libraries in men's and women's institutions, and also, Mr. Gregory, from your experiences, what is your feeling about that?

TISSUE: I will answer the question first. All I can tell you is that I hope so. We've had very good experience with women teachers. We've had them in some of our institutions, and I'm all in favor of it. I think our teaching staff out at Deuel Vocational Institution is about half women, and there are no special guards there. As far as women are concerned, to the best of my knowledge, there has never been a problem. I hope we can apply this to librarians.

GREGORY: I can only offer an opinion because I have no experience in the matter. I would rather imagine that the inmate population would defend a woman who came into some trouble.

QUESTION: Mr. Tissue, you mentioned availability of Playboy as a good example of availability of publications. How about the availability of periodicals of different political positions?

TISSUE: I can't speak for all of them, and I can't speak for every institution. Now the point I was trying to make there is the relaxation going on. I don't think a whole lot of institutions would permit the Berkeley Barb, for instance. I really don't know, but I know some of them do. And I think it varies at different institutions. But there is no Departmental policy at this time on restrictions; it's pretty much left up to the warden. As a matter of fact, we've taken all reference to that kind of material out of the Education Manual.

HULL: There is no Departmental ban on a particular publication. For instance, we don't say all copies of the Berkeley Barb may be kept out.

QUESTION: Can you give an instance?

HULL: We say it's up to the warden of each institution to examine each issue and if he feels there is some statement in there that would violate Section 2600 of the Penal Code, incite people to rise up, strike guards, or set fire to the institutions, he may ban that particular issue. I don't know the extent to which this is applied.

NUNES: The Berkeley Barb or any other similar type newspaper or magazine is not permitted in the prisons. It is not permitted at San Quentin, San Luis Obispo, Folsom, Chino, Frontera and all the others. I know from personal experience because no more than seven months ago I filed a law suit in the San Luis Obispo Superior Court demanding that we have access to the Berkeley Barb, the Berkeley Tribe and all similar other things. No matter what publication it might be, any comment critical of the Department of Corrections will not be permitted, including books similar to what George Jackson wrote and Maximum Security, which was just written by Eve Pell. I can enumerate dozens of them. And the Department of Corrections does have a list. I spent years refusing to work, and every morning I'd go around in the trash cans before the officers would get there and empty their wastepaper baskets, take the papers back to my cell and catch all those memos that used to go back and forth between the offices. I compiled a list of the publications that are prevented from entering the institutions, and it was in excess of 50. This was only six or seven months ago.

QUESTION: Mr. Hull, is there any feeling in the Department of Corrections that prison libraries are related to the problem of violence in prisons?

HULL: Not that I know of. In fact, if we had our way, they would all be like Mr. Nunes, working on their writs and working on getting out within the system. Then we could take the resources we're having to spend on guards for that kind of assignment and put it into other programs like libraries.

QUESTION: But I think you represent the minority.

PATRICK WILSON, Dean, School of Librarianship, University of California, Berkeley

Welcome to the second half of the conference on prison legal libraries. I'm really extremely grateful for the people who forced me into getting the school to sponsor the conference and getting myself to participate. The morning session was fabulous, I thought. This afternoon session is meant to be action-oriented. We're really interested here in the question of what can be done and should be done, particularly but not exclusively what should be done by librarians. The conference was planned by a group of people including a fair number of students of the School of Librarianship. A few of them have some things to say about what we've been doing. Joan Stout is one of the Berkeley students who has been investigating the San Francisco County Jails to see what use, if any, our students can be to the San Francisco County Jail System, and I think she will say something about what they have been doing.

JOAN STOUT: In January a small group of library school students here, as part of a class project, initiated a project to develop library services to San Francisco County jails. In the past four months we've been working with Sheriff Hongisto and his staff, Fay Blake of the School of Librarianship, and several members of San Francisco Public Library to provide regular and effective service to the residents of those jails. We have learned a lot along the way about criminal justice and about working in a bureaucracy. We also confirmed our previous suspicion that the traditional passive role of a librarian in society is obsolete. This

was brought home to us by the responses that we received to several of our projected services. We proposed to develop a community resources file which would provide jail residents with information on community organizations and agencies that might be of interest or assistance to them upon release or of assistance to their families while they are in jail. And we were asked, "What has that got to do with the library?"

Access to legal materials is of primary concern to prisoners, so naturally we were eager to help tackle this problem, but we ran up against the common notion that legal collections are lawyer's work. The fault is not that of a misunderstanding public. It is ours as members of a profession which has failed to act to make its services relevant and available to all. The position of libraries and librarians has too frequently been one of insulation and even isolation from the world beyond the noses of the stone lions which guard their doors. Studies have shown that only ten percent of our population uses libraries. Libraries are frequently regarded simply as repositories of books and the librarian as the person behind the desk who directs you to the bathrooms and sometimes to the card catalog and also collects overdue fines. Yet it is not only the public image of the library that needs to be changed. It is also the profession's image of itself. Education for librarianship often shares the insulation of the library outside. We are trained in a vacuum, as the classroom is in many ways an artificial learning framework often with no relationship to reality. The education is going on <u>outside</u>. If such insulation and complacency are not to force us into oblivion, the library must extend itself into its community with innovative services which meet

their needs. It is perhaps more important that we reach those people who cannot get to a library even if they wanted to: aged and other people confined to their homes, patients in hospitals, and especially people in local jails and state and federal prisons.

While the libraries in this country are certainly not among our most endowed institutions, jails and prisons are at the bottom of the list insofar as library materials, services, staff, facilities and financing are concerned. Not only do prison libraries rarely meet numerical standards, but 50 to 70 percent of the materials they do have are generally useless, irrelevant and inappropriate to the lives of the prisoners. In all cases, from the local to the federal level, legal collections, if existent at all, are particularly poor. There are some prison librarians who have attempted to work with woefully insufficient budgets and collections, yet due to the lack of support from the outside the end result has still been inadequacy.

In a recent issue of the Daily Cal there was a short article that said very simply: "Inmates at Soledad Prison are launching an attempt to expand the prison library beyond its present science fiction books and novels. Although we are presently facing many obstacles, we are asking that any student interested in helping with the attempt write Gordon Rice, Post Office Box 33604, North Soledad, Soledad, California." The response of librarians to such a request should be immediate, but we should not have to wait to be asked. Librarians and library school students must give increased energy and attention to providing for the library and general information needs of jail and prison residents. Although there is obviously much to be done in the establishment of general

vocational and recreational collections, I would hope that our participation in the development and administration of legal libraries would not be excluded. In the past librarians, even law librarians, have seemed to think that legal reference service amounted to the practice of law, and therefore they have been reluctant to offer it. While we certainly do not presume to be lawyers (although the ideal credential for prison librarianship might well be a joint degree in law), the librarian or library school student need not be relegated to the sole function of distributing legal materials.

In his concurrent opinion to the 1969 Johnson v. Avery case, Justice Douglas asserted that: "More and more of the effort in ferreting out the basis of claims and the agencies responsible for them and in preparing the almost endless paper work for their prosecution is work for laymen. There are not enough lawyers to manage and supervise all of these affairs; and much of the basic work done requires no special legal talent." He proposes that, "Laymen, in and out of prison, should be allowed to act as next friend to any person in the preparation of any paper or document or claim, so long as he does not hold himself out as practicing law or as being a member of the bar. The cooperation and help of laymen as well as of lawyers is necessary if the right of 'reasonable access to the courts' is to be available to the indigents among us." As long as the heavy demand for legal counsel in prison is not met by lawyers, it would seem that, with basic training in law librarianship and perhaps further specific instruction in post-conviction relief and writing writs of habeas corpus, we as librarians and library school students working in service to prisoners might serve as such "next friends."

WILSON: Mr. Ned Tuck, also of the School of Librarianship, engaged in a particularly adventurous project in the course of the last quarter. He got into San Quentin and will say something about it.

NED TUCK: I'm glad to have it worded that way because I want to start my remarks by saying it's no easy task to get into San Quentin at all. You have to go through an unbelievable bureaucracy and quite a few hassles in order to get in there. And once you're in, you're still confronted by what I would call a rather closed system, the California Department of Corrections itself being a closed bureaucracy. I don't have any formal remarks except to tell you what I've been doing there.

San Quentin has two libraries. It has the regular library which functions fairly well, I suppose, all things considered, except that it's being run by a teacher and by a non-librarian correctional official. And that library, which I have not been working with, had some legal material but from what I saw there it was a fairly poor collection, and I don't know what kind of service they get from the State Law Library in Sacramento.

The other library that I have been working with by arrangement with the School of Librarianship and the College of Marin is the so-called College Library at San Quentin, which was conceived and begun by an inmate at San Quentin about four years ago. This library has progressed even farther than the regular library has at San Quentin. It has done that because the inmate is so dedicated to what he has been doing there and because he has been relatively free from some of the hassles that go on when Department of Corrections officials have their thumbs over the materials that are coming into the library. Over this period of four

years since the inmate has been running the College Library at San Quentin, which complements courses taught there by teachers mainly from the College of Marin, he has built up a collection of 10,000 volumes on no budget at all. Most of those have come through very generous donations from faculty members at the College of Marin. Throughout most of this time he has had no official assistance and, as a matter of fact, very little hindrance from prison officials in the way he has operated the library there except for the fact that he can't get the materials that are most wanted in the library, and the College Library there by its very nature is limited technically only to those inmates who are taking college level courses.

One of the problem he had, I think, is indicative of the problems of running a library in a prison such as San Quentin, which is probably the ideal example under discussion here. During what he referred to as the August 21st Incident, which many of you know is the date that George Jackson was killed at San Quentin, the correctional officials came into his library and in a supposed search for weapons took all of the books off the shelves and dumped them on the floor. They removed the rods from the card catalogs, assuming that those might be used as weapons, and dumped many of the cards on the floor. Then this inmate librarian was left to put this collection of 10,000 volumes together again without any assistance at all. And one reason that we can't get any assistance is that in prisons the pay is so poor that this eliminates inmates wanting to work there at all; also other prison officials are unwilling to give up their clerical assistance, which they get from inmates, to another inmate and his assistants at the College Library. My purpose in going

in there was to render any assistance I could to this inmate as a library school student in developing his library. I have done just about everything inside the library you can, from cataloging, checking out books, helping people who come into the library wanting various things for their courses.

An interesting fact for me is that in a very short time after you have gone through all the hassles of going through three gates and a metal detector every time you go in there, once you get inside the library and are working with the inmates, after very few visits you completely forget you're working in a prison library with people who have been condemned by our society.

Increasingly in the past few weeks I have been listening to what prisoners have to say there about libraries and about legal collections and any assorted problems that they like to talk about. The main point that I find is that there is such a bureaucracy built up in the prisons themselves and in the California Department of Corrections and there are so many little problems that have built up into one mountain of a problem that it has almost become ineffective to attack even legally through the courts the little problems that make up the problem.

There is no purpose in training librarians to use legal materials unless the legal materials are there and the prisoners can make use of them. There is no reason to have any sort of books in the library that are any good at all unless the prisoners are allowed to have them and make use of them. There's no reason to train inmates to use the legal material if they're not going to have legal materials to work with and if you have to go through years and years of court battles to get even

a very small collection in libraries for them to use. Although law libraries benefit only a very small percentage of prisoners, any prisoner who is benefitted by legal materials in prison benefits all prisoners and as a result benefits society as a whole.

I think we have proposals in our nation now for a national health insurance program, and the AMA has been fighting that for a long time, and I don't see any reason why we couldn't have a concomittant national legal aid program along with that from lawyers and legal officials and librarians and so-called para-professionals. I think once you get these people working with the legal materials with prisoners in libraries you will be able to see some progress along these lines.

There is a lot of censorship going on at San Quentin, and everything that goes in and out is censored and particularly that which has to do with legal assistance is censored. One of the main problems I encountered in my experience at San Quentin was not that of getting more warm bodies like me into the prisons but of getting books, let alone legal materials, into the prison itself. The books that arrive there often come in crates from the publisher; many times they're put in a storeroom and sit and gather dust for a long time. Sometimes they're opened and inspected. Sometimes they're disapproved by various people along the way in the San Quentin hierarchy, and they're rejected and they never reach their destination, whether they were ordered by the prison, ordered by the main library or by the College Library. I think that it's indicative of the problems at San Quentin that the lower you go in the hierarchy at San Quentin and in the Department of Corrections the more the tendency is to laugh or to wink at so-called regulations or progress that is made on the upper level. When

announcements come down from on high, from Mr. Procunier's office, they are often winked at by prison officials at San Quentin and in effect they have no effect.

A real effort has not been made to employ librarians in prisons. I think persons in the California Department of Corrections do not really want professional librarians running libraries in prisons such as San Quentin. I am willing to stand here today and offer myself up, as soon as I graduate, for any position offered.

WILSON: Frank Herch has travelled more to write a term paper than any previous student in the history of our school. I think he visited all the correctional instituitons in the state, have you not?

FRANK HERCH: I visited ten of the institutions in the state to view the libraries for a paper I am writing under the guidance of Professor Raynard C. Swank of the School of Librarianship. I have had the assistance of Mr. Euel Tissue in securing admittance to these libraries. In my travels I visited all the state prisons except for California Conservation Center at Susanville, California Institution for Women at Frontera and California Institution for Men at Chino.

To sum up my observations I would say that the prison libraries that I saw, in almost all parts - the legal collection, the reference collection, the magazine and newspaper collections and the main stacks - foment resentment among inmates. As such, the libraries in the prisons of the state of California are not conducive to rehabilitation.

I shall describe two library situations which figure prominently in stimulating inmate contempt for the California Department of Corrections.

At San Quentin's library, the Black Scholar, which is censored for being "inflammatory" at other institutions, is received but few of the interested inmates know that it is there because it is kept in a back room and no record of its existence is made available to the library patrons. The few inmates who know of its existence pass this piece of information on by word of mouth.

At Deuel Vocational Institution at Tracy, the legal and reference collections are administered by the librarian. To obtain books from these collections, an inmate must bend over and talk through a twelve by four inch slit in a glass wall which is located at approximately four feet above the ground. For one book at a time he must forfeit an identification card. He may choose from among 42 law books, i.e., the collection which the Supreme Court has criticized in the Younger v. Gilmore opinion, none of which may leave the library. The Tracy inmate has many brothers in the other state institutions whose legal research is limited to one volume at a time and he is hampered by having to forfeit it when he leaves the library.

Helpfully, State Law Library service can supply some useful material, and superseded codes, reporters and digests have been donated to some prisons. Luckily, some inmates have been blessed with sympathetic librarians who allow law books to be charged out overnight.

When I spoke to Cy Silver in January, he revealed to me the following circulation statistics for the State Law Library:

30 percent to state government

15 percent to county law libraries

15 percent to attorneys (Sacramento area)

5 percent to other interlibrary loan

35 percent to state prisons

These statistics illustrate quite a need for law books among the prison population of California whose average educational level is eighth grade.

I would like to address myself next to the inmate-clerks who work in the libraries and then to the librarians themselves. A fortunate few inmates receive "pay numbers." A pay number is a job that pays from $3.00 to $20.00 per month. Usually only the head inmate clerk and another processing clerk will have a pay number while a half dozen or more inmate clerks will work for nothing, hoping for a promotion to a pay number or a good report to the Adult Authority by the librarian. At Corona the inmate who handles the legal collection may receive periodic payment since there is a rotating pay number at that prison. At San Quentin the inmate who administers the legal collection gets paid monthly. At Southern Conservation Center at Chino and at California Men's Colony at San Luis Obispo the head clerk, who has a pay number, administers the legal collection. At all the other institutions I visited the inmates who keep the legal collection in order, check out books, receive State Law Library requests and answer minor legal reference questions do not get paid.

The librarians at our state prisons do get paid. However, they perform duties which are not often considered part of a librarian's repertoire. Many of these librarians have teaching duties and the critical

reading of inmate-written manuscripts. C. T. Randall at Vacaville is a teacher-librarian and he reads manuscripts. Dean Gregory at Folsom, one of the four active professional librarians in the employ of the California Department of Corrections, runs a writers' workshop. Gerald Nelson, one of San Quentin's two librarians, and Calvin Tomlinson at Tracy teach classes and read manuscripts. John Spindler at Jamestown is a teacher-librarian and has found himself so constantly involved in a driver's education course recently that the inmate clerks on the library staff come and go without his having met and trained them. Lloyd Schultz at Tehachapi was a teacher-librarian, but he now serves only as a librarian since he must officiate over the minimum and maximum security libraries which are located on the grounds there 500 yards apart from each other. M. Quates at Southern Conservation Center at Chino must travel to two camps as far away as 150 miles to teach each week as well as serve as the librarian there. Abe Oppenheim at California Institution for Men at Chino, Frank Capadona at Corona and John Raffile at Soledad are professional librarians who do not teach but may on occasion read inmate manuscripts.

I have belabored the point regarding the assumption of duties which do not require a librarian's but an English teacher's expertise to advance a bit of logic. I think librarians in our state prisons should be well versed in legal reference and bibliography and use this skill to assist inmates in understanding the content and uses of different legal material. If these librarians can read manuscripts and teach courses in mathematics, English and driver's education, then they can surely take time to perform within the librarian's province, i.e., to do reference and bibliographic work.

If trained legal advisors cannot be made available to the indigent incarcerated of our state, then iet us offer librarians with bibliographic knowledge of legal materials as aides to inmates in solving their myriad civil and criminal problems. This is my suggestion today: not that prison librarians pretend to be attorneys but that these librarians perform as legal reference librarians in the course of their duties.

If your prisons are to become the rehabilitative institutions that we have envisioned, there are many giant steps that must be taken in the administration of library services: the exclusion of censorship, the institution of valid holds and overdues systems, the acquisition of many more books on a variety of non-fiction subjects and the development of library networks between prison and public libraries. More money must be spent on prison libraries for more and newer books, for better space and for more trained professional librarians.

WILSON: Now another student, John Gray, student director of the Criminal Appeals Project of the University of San Francisco, will talk on other alternatives of the defender program itself.

JOHN GRAY: At the University of San Francisco we have a program where students go out to the prisons and deal with the inmates. As it relates to the topic of your conference here, the reason we're there is that the men have inadequate facilities to deal with their own problems. They can't help themselves because they don't have the proper books, the proper tools needed, or they don't have the training needed to utilize those books that they do have. People like Roney Nunes and Mr. Ingram have done a lot of work in the prisons. They know what has to be done. But

they also have limitations and hopefully the thing to come out of this conference is some type of concerted action on your part to establish proper library facilities inside the prison system, because until they have the facilities those of us who are working in programs to aid the prisoners really are only dealing with the very top of the iceberg. We help a few people. We help, maybe, a hundred people a year, two hundred people, and there are 20,000 people in prison, and they have to help themselves, and the only way they can do that is if they have the proper facilities and people to staff those facilities who can show them and help them use legal materials. Even if you get the materials there, the next step is that you have got to put people there who know how to use them and can aid the prisoner himself in using those materials. Few prison lawyers are good - and there are very few that are top quality people - most of them are now out. That's how they got out: because they're good.

You are going to have to go out and create the library programs. Don't talk about it any more, do it. Establish prison libraries! There's money around. Get your institutions to back you, and get the prison libraries set up. Make sure the Department of Corrections staffs the libraries with the proper people. Make sure they have the right volumes. But rather than go into a long discussion, I think maybe we should just talk about how we can go about getting it done and getting the legislation through or whatever it takes because that's the whole thing. Otherwise the whole conference is a waste if it is only talk. There are a whole lot of programs, a whole lot of alternatives. Students can work. We can only help a few people. You can help a lot more people - a hell of a lot more - if you will go beyond the talking stage and do it.

RICHARD SIMS, Legal Counsel to the Sheriff of San Francisco County

"How Can Legal Library Service Be Extended to County Jails?"

I must admit that I come today with some reservations about talking with the group that's assembled here, knowing that I'm talking mainly to people who are librarians, mainly to people who are interested in libraries. I am speaking particularly not about the state prison system but a county jail system, in particular the San Francisco County Jail System. I still have some reservations about it because there are some preliminary questions I think have to be asked if not answered even before you get to the question of how you get a decent prison law library into a county jail.

The one overriding irony, it seems to me, in discussing this problem as well as discussing all the different aspects of how to make prisons or jails better, the one irony is the final realization that in providing better medical care, in providing job training programs, in establishing good libraries, are we not making an essentially incorrect system more palatable and therefore more likely to continue? I think the answer to that question is "yes." To the extent that Richard Hongisto, to the extent that other people in the state prison system make those places more decent, there inevitably will be (and to some extent has already been) a kind of compromise that says, "By God, we're not going to punish people as badly as we have been punishing them, but we're still going to lock them up, we're still going to isolate them." We're going to take the edge off the horrors of the past hundred years in prisons and jails in this country, but this country is a long way from abandoning its theory of

punitive sanctions for the violation of laws dealing with criminal justice. That's something that isn't going to happen for a long time. As a matter of fact, the essential punitive philosophy of criminal justice has been with us since the thirteenth or fourteenth century in English Common Law, and that's a long time to have it around. It's still going to be here. We're still going to lock people up for a long time rather than dealing with their problems as essentially social problems. And if we're going to do that for a long time, I guess it makes sense to make things better in those institutions even though personally I have a hesitancy, an ambivalence, a regret. Knowing that if we make places more decent, the outrage is going to be less but therefore it will be harder to effect any kind of fundamental or essential changes in the system.

County jails, I think, are not like state prisons. In many ways they are probably worse than state prisons, and you've all read about the conditions in them. They're essentially different from state prisons with respect to law libraries or the possibilities for law libraries in them.

Another reservation that I have today in coming to you with a kind of personal statement is not being able to say that I think a law library in a county jail is a panacea. I don't think it is. I think we ought to have them, but I think they're not a panacea. As a matter of fact, in the order of importance of things that have to happen in the county jail system, I think that a law library doesn't even have a very high priority. I think that probably higher priorities should be given to questions like whether mentally disturbed prisoners have access to treatment, whether men and certainly, God knows, women who are spending time in the institutions have access to decent and effective job training, whether there is

some sort of decent re-entry system set up for people coming out of county jails.

The reason I have to be a little bit discouraging about the priority of the library is that, unlike the state prison system, two things are true about county jail prisoners. The first thing that's true is that most county jail prisoners, in fact over 95 percent of them, are there on negotiated pleas. Very few county jail prisoners have gone to trial. Given the procedural developments in the law dealing with negotiated pleas and the fact that negotiated pleas are not on the record, as a prison lawyer I can tell you that with very, very rare exceptions there is simply no point in fooling around in the courts challenging the validity of negotiated or bargained pleas. You know, it ain't going to work. It doesn't get you any place, and therefore I think it isn't much help. In the state prison system more people have gone to trial and have been involved in evidentiary situations with witnesses and testimony.

The second difference between the county jail system and the state prisons is that our average time of incarceration is still somewhere, in San Francisco, around 65 days. Unless the guy has done some time in the jug and has gotten some familiarity with legal materials or unless there is a jailhouse lawyer who is doing time at San Bruno, there's an awful lot to learn in a short period of time. God knows, no one wants to serve time in a correctional institution to learn how to be a lawyer, but the prisoner doesn't quite have the time to learn how to do effective legal research. The turnover is much quicker. So it's a problem whether any kind of law library can be used effectively. I happen to believe, for example,

that a far more effective remedy for the legal problems of county jail prisoners is legal representation. In my way of thinking and in the thinking of the Sheriff's Department, that's something that has to happen. It's patently the only way that we're going to get half-way decent remedies for the legal problems that our prisoners have in county jails, that is, through lawyers or law students providing legal representation. That is a better answer than a law library.

That's not to say we shouldn't have a law library. I don't think that's what I'm saying. I think we should have a law library for a number of reasons. One is simply because whether or not anyone does anything worthwhile with filing writs or bringing legal actions, it's a good education. It's an education for people confined in a county jail to learn something about the law, to start finding out what legal research is all about. I think we'll see an increase in para-professional legal workers in the counselling and legal professions generally, and I think that's a good place to start. And probably the most important reason I think we ought to have a law library in the county jail is that it's the most effective deterrent to correctional misconduct that I know. Not only so that a guy can challenge what happened in a trial but so that he can challenge conditions and treatment in any kind of county jail situation - treatment that ranges all the way from arbitrary discipline to nominal medical attention.

The problem in getting a law library is partly imagination and partly the pragmatic problem of facilities and personnel. It looks as though

the San Francisco Public Library Adult Services Division is going to be able to help us in getting books. I'd like to think that things look very good for getting the books. That makes it hard for us, because once they give you the books, they come to you and they say, "Hey, here are the books, now use them." It takes a little imagination to figure out how to put a legal library in a county jail where you don't have space, and you don't have enough deputies to move people around. I think that we'll work those problems out.

I'm always amused by the imaginative solutions people come up with. There was a great story in the paper this morning about yaks. About a week ago there was a small story in the paper from the Associated Press. The Associated Press story said that yaks are contrary, mean and dangerous. And now there has started a great yak debate. But I want to read you this to show you what the human imagination can come up with. "Recent history shows that in 1948 a Tibetan trade mission arrived in the United States to try to trade yak tails for heavy machinery. The trade mission noted that the yak tails make the absolutely finest beards for department store Santa Clauses. The yak tail beards, they said, can be combed easily and are crinkly and attractive." I guess that if the Tibetans can sell yak tails for heavy machinery we ought to be able to figure out some way to get a law library into a jail and we're sure as hell going to try.

JONATHAN LEWIS, Administrative Assistant to Senator Petris

"Prison Law Library Legislation"

I thought I'd take just a few minutes to go over with you the specific provisions of Senate Bill 1273, which was the prison law library bill that Senator Petris introduced last year, to explain to you some of the arguments that the Department used last year by way of giving you a feel for some of the debate that's gone on in the Legislature about this issue, and then wrap up by giving you some idea of where I think we ought to be headed.

First, the bill would have established in each institution in the state, including the women's institution, a full law library. We went to the Legislative Counsel and we said, "If you were going to buy a law library for yourself, what would you put in it?" We then asked Counsel to draft the recommendations. In the resulting bill, each prison law library was to be supplied with a photocopy machine. Second, prison authorities were to allow every inmate access to the law library regardless of whether he was in an adjustment center or wherever. Third, denial of access to the law library was not to be used as a punishment. The cost of maintaining the library was to be taken from the Inmate Welfare Fund. Indigent prisoners were to be supplied their duplicating paper and materials free of charge. That was basically the bill. We thought it was a modest effort. The Department disagreed with us.

Some of the arguments against the bill that were described this morning by corrections officials were the first I'd heard about them.

I thought they were amusing enough to answer and then conclude with the arguments presented officially in the hearings in Sacramento.

The first argument, of course, is the classic one used by bureaucracy: the Legislature ought not to do its job, it ought not to legislate. Instead it should allow for administrative discretion and good faith in all things. "We respond to public pressure," they say. That hasn't been my experience. In fact, there were condictory remarks this morning and Mr. Hull admitted that legal services for inmates are lower on the priority list than other things. I think one of the great failings in this philosophy is that the Department of Corrections doesn't recognize that it is part of the criminal justice system. It is not simply a service for providing rehabilitation to some people the Department alleges are sick.

The second argument is the great controversy about what to do with the good old-fashioned Inmate Welfare Fund. The Department of Corrections claims it knows what the inmates want - that has not been my experience. Even if it's true, I think it's an awfully paternalistic position to take and certainly not one that is borne out by the recent prison disturbances across the nation and particularly in California. Prison authorities claim that it would be unfair to use the Inmate Welfare Fund to build prison law libraries because so few of the inmates would benefit from it; we should only have programs which benefit the majority of the inmates. In fact, except for security, there is no program run by the Department which benefits every inmate. Adequate conjugal visits, religious services, and the adjustment centers are not used by all the inmates. So, I find this argument kind of hard to handle. But, trying to be fair

about it, I will extend now to the Department a standing challenge from Senator Petris to hold regular secret ballots involving all the inmates, administered by an inmate-staff commission, on what the inmates want done with the Inmate Welfare Fund. And the Department would have to agree to whatever the inmates decide.

Third, it is true that the educational level of the inmates is only an average eighth grade reading level. This, in itself, should be a mandate for the Department to get to work. The fact that the Department is not concerned is sad, but it's not a reason to deny equal access to the courts. However, I agree that this is a problem. It seemed to us when we proposed the legal library legislation that it was but a first step. Now it turns out that the Department's maximum effort to provide legal access is Senator Petris's minimum standard. We think the law library should be administered by paid professionals; we think every inmate should have access to a state-wide public defender and so on and on until the goal is reached of equal access to the courts. We don't have a complete route yet, but we know where we want to go, and all this bickering about educational level doesn't deny the fact that the Department is part of the criminal justice system.

One other argument that was not mentioned this morning which I always find amusing is the Department's claim that because the Supreme Court is now considering a case concerning a matter, it's premature for the Legislature to act. This is at the same time they're going over to the court and saying that it's a decision only the Legislature should make because the courts ought not to legislate. By playing that sort of double-handed

game they effectively convince us we ought not to do anything, no matter how urgent the problem.

Those are the basic arguments against the bill and that gives you a feel for how tough it is even to get a modest reform like law libraries passed through the Legislature.

I should tell you that it was almost an accident that we introduced the bill. We didn't even know that there was a Supreme Court case pending. An inmate who had just recently been released came to us and presented a lot of problems and we said, "What would you do?" and he made that suggestion about libraries and we went ahead with it, sort of innocently stumbling into the field.

But even at that, the law library problem is really a small part of the whole question of legal protection for inmates. Even in that context legal protection for inmates is only a modest and small fragment of the whole problem of prison reform. We need better food, uncensored correspondence, free access to information both into and out of prisons, personalized medical care for inmates, personalized mental health care, a racially-balanced staff, the right to have your own clothes, getting rid of those god-awful numbers, absolute control by inmates over the Inmate Welfare Fund, equal pay for equal work, and I could go on all morning. And I consider these proposals to be modest ones.

I predict that the law libraries, however instigated, even at the very highest level of quality we could hope for, would do little to change the total life of the inmate. It seems to me that we need to center on some of the bigger issues. I think you've probably heard these elsewhere.

Just to reiterate quickly, one of them, of course, is community-based institutions that are truly community-based, and that doesn't mean administered from Sacramento. Another one, of course, is doing away with the indeterminate sentence. It still stands as the major barrier to any meaningful program inside the institutions no matter what! No man is willing or able to assess himself, get inside himself to discover whatever he is - assuming that's necessary - when he doesn't have any sort of hope, when he is faced with an annual review by eight policemen.

When I really give a lot of thought to the prison system, it comes back to my personal concern about protecting society. I am not really all that concerned with individual inmates. More importantly, I am concerned with protecting myself from being victimized. I think common sense and the law say it's okay for society to incarcerate a man. The law and common sense do not say that you should brutalize that man, dehumanize him, or otherwise degrade him. I think it's pretty clear that prisons as they are presently constituted do not serve as a deterrent to crime, they do not rehabilitate, and they do not meet any of the goals that either the bleeding heart liberals or the law and order conservatives say that they want. They are not rehabilitating nor deterring crime. What are they doing? How are they spending our money? I think you have to see the law library issue as part of the criminal justice system which ought to be deterring crime and fulfilling our highest ideals concerning American Justice.

WILLIE BROWN, California State Assemblyman

"How Can We Legislate Effectively?"

Let me say that I'm pleased to be invited to participate in this conference and I am spending almost one day a week participating in conferences on some aspect of prisons. And that tells me something about the prospects for an elevated dialogue on prisons and maybe even an elevated awareness on prisons.

You've asked me this afternoon to address myself to how you can legislate effectively. Listen, if I knew how to legislate effectively, we obviously would not be having this meeting. Contrary to what some of my luke-warm friends say, I am trying to legislate effectively and I have obviously not achieved that goal, and I don't think anyone else has. Certainly Nick Petris would not maintain that he knows how to effectively legislate; otherwise Jonathan Lewis would be here talking about the fabulous success in enacting the bill that he's speaking about rather than the problems that persist. Likewise, every other person who stands before you, an elected official or a representative of an elected official, does not know how to legislate effectively. If so, then he isn't doing his job, he's just talking about it.

Now let me give you some ideas of how, with circumstances as they are, I think we may be able to have some meager and minor effect. We aren't going to successfully legislate anything. And the reason why I say we're not going to successfully legislate anything is that the legislative process operates through a majority vote of those persons holding

elective office. Once we are elected, our constituency becomes our fellow legislators: the 40 members of the Senate in Mr. Petris's case and the 80 - or rather the 79 members of my house in my case. And let me tell you, if you think that the people in Piedmont and the people in Orinda or the people in San Mateo County or the people in Orange County vote funny, you ought to observe the kind of response and the questions you get when you introduce a piece of legislation that really, in fact, makes only some minor change in the life style of people. Legislators are people who reflect what they believe to be the interests of the constituency they represent.

Most of the constituency in this state is totally ignorant about the prison system and totally hostile to any removal of that ignorance. They are pretty much confined to the category of people who desire to remove anything that displeases them from their view. Beyond that they have no other interests. There is no interest in rehabilitating people, no matter what dialogue people engage in on that. For example, you could not and cannot get 54 members of an 80-member Assembly or 27 members of a 40-member Senate to override the Governor's veto under legislative process to increase the number of pay slots in the prison institutions or to change the amount of release funds that a person gets when he gets out, or to make any of the ordinary kind of humane changes that obviously need to be made.

Last year we could not get eleven members of the Ways and Means Committee to vote for Senator Petris's bills simply because a majority of the members of the California Legislature, the vast majority of elected

officials throughout this state, reflect the views and the concepts and the commitment of their constituencies. And that view and concept, as I indicated earlier, is that any person whose acts or thoughts are any different from the rules that society lays down must be removed from my view and once he is removed from my view, I don't care what you do with him. Just don't tell me about it. You can do anything in the world you want, but just don't tell me about it. If you tell me about it, you may shock me into responding like a human being, and Lord knows, I don't want to have to respond as a human being, because that means that I may have to acknowledge some duty to a less fortunate human being or to human beings that are different from me. Why do people get so upset over Attica? Not because it occurred but because we found out about it

So when you think in terms of how you legislate effectively, evaluate the constituency with which you have to deal in order to legislate. And that constituency is as I have just described it.

Now in spite of that constituency, I think there are some minor techniques we can employ to successfully legislate. For openers, I do not believe that it's necessary for us to do anything except tell the truth. You do not have to, for an example, elevate what goes on inside of Soledad and blow it out of proportion. You can simply tell the facts.

One of the things that Dick Hongisto has done in San Francisco is not to make any bones or dramatize beyond reality what is occurring inside of San Francisco jails. He simply invited the press and everybody else in the world in to look at it with no editorializing whatever. So for openers, to effectively legislate we do not have to do anything but

resort to the facts. In resorting to the facts, however, we must make sure that the facts are presented in such a fashion that legislators can catch on and begin to understand.

To illustrate, this year we paid a visit, as a result of Mr. Petris's bill, to two institutions: Deuel at Tracy and the Women's Colony at Chino. As Chairman of the Ways and Means Committee, I am empowered to name memberships of sub-committees. Rather than designate a fruitless prison reform committee, I put it in a language that my constituency there in Sacramento could understand. I said, "I am creating a committee on the cost effectiveness of the prison system." And then I appointed to that cost effectiveness committee not a whole bunch of Willie Brown types, but I appointed an Assemblyman from Orange County who probably wouldn't enjoy drinking coffee with me - initially, you know, at the outset. I appointed an Assemblyman from the northern part of the state who never had occasion to do anything with prisons. And then I didn't hold the hearings at the University, I decided to hold the hearings inside of the institutions, to take them inside the institution. And I decided not to structure the hearing at all.

I sat my staff down and I said, "Listen, Mr. Procunier, we're coming down to your facility and I don't want any B.S. I want it known to every person in your facility that if they desire to say anything to the Legislature, no matter how insane, I want the Legislature to hear it." I had an abiding sense that even these uninformed, what can be considered law-and-order type legislators could get the message when some woman inside one of their institutions tells him that she's there for five years to

life and that under no circumstances would rehabilitation apply in her case simply because she is prohibited from ever visiting her family or keeping her children overnight; that these kinds of separations could only make her hostile and what-have-you. I had an abiding sense that once these kinds of human stories were in fact relayed, I would find more allies with far more credibility for that Sacramento constituency than I could ever hope to have on the issue.

I'll tell you the results of that. We went to Chino and we went to Deuel. In this year's budget the money for released prisoners has gone up from the original $59 or so to about $250 (whether or not they've got the courage to vote for an override when the Governor slashes it back, I don't know at this stage of the game).

With reference to the Inmate Welfare Fund, we argued about the Inmate Welfare Fund for years and years. The legislators really believe that the Inmate Welfare Fund is actually used for facilities to operate and run the prisons. They shouldn't buy that, but the administration of the prisons has never really leveled with them. But when some inmate comes up here who is on the inmate council and says, "Listen, we pay 79 cents for a natural comb that Willie Brown can buy for 30 cents," the legislator says, "What do you say?" He says, "I pay 79 cents for a natural comb that Willie Brown pays 30 cents for on the street." The legislator says, "Hey, wait a minute. That doesn't make sense. You buy at wholesale prices through the canteen and you sell them out of there. You're not supposed to make a profit." And then the manager of the welfare operation comes along and says, "Oh no, that's not so. We have to

make enough money not only to pay for the operation of the facility inside but we have to make enough money to buy footballs, boxing gloves, televisions, any kind of books or other kinds of materials that the prisoners want. That's why we have to charge an average of 40 percent more per item at the same time that we're paying them somewhere in the neighborhood of three to six cents per hour."

The legislator began to understand that this wasn't about a Black Panther newspaper being distributed inside of the prison. This was no dialogue about George Jackson ripping somebody off. This was something that white, conservative, middle-class America could understand: wages, prices and working conditions. He understood that very, very clearly. So in this year's budget changes were made. We made Procunier's people go back and tell us what money they were ripping off the Inmate Welfare Fund for things that they consider necessary for the successful operation of a prison institution as they are presently operated. About 30 percent of all the monies that have been ripped off the Inmate Welfare Fund have been restored to the budget this year so that the General Fund, the general taxpayer's dollar, supports the facilities.

How do you effectively legislate? That's one example of how we elevated the level of the constituency. There is no need to lie about anything going on inside the prisons. There is no need even to stretch the imagination about anything within the prisons. For example, the Legislature is going to be successful in modifying the adjustment center facilities simply because in the course of these visits it became very clear that there ought to be a way to get into them and there ought to

be a way to get out. They heard this information, not by letter, not from the Prison Law Project, not from the Prisoners' Union, but from people within the facility, from prisoners and from guards who had to acknowledge that if they don't like a prisoner, that if someone does something wrong on the chow line, he may end up in the adjustment center with no hearing and no way to ever get out of that facility. Only an increase in population was reported as a way that one graduates from the adjustment center. That became clear. That was elevating the dialogue of the constituency. Now that's a long and laborious process if you're talking about legislating effectively.

I suspect that right now in the California Legislature Senator Petris's bill on prison libraries would not pass because there still isn't a broad enough constituency in the Ways and Means Committee to put together eleven votes. You wouldn't think that would be the case, but that is in fact the case, because there are law and order supporters and law and order non-supporters. There isn't one legislator in Sacramento other than those of us from what they call the crazy part of the state, the San Francisco Bay Area, who is prepared to run the risk of being designated a non-supporter of law and order.

Any agency which testifies before any of the legislative committees doesn't have to deal with the facts. They don't have to deal with the issues. They don't address themselves to those things at all. All they have to do is convince the legislators they understand what the author had in mind and that the issue is within the framework of the authority that has been given to them. An agency only needs to convince the

legislators that a statute would create a problem of discipline resulting in the breakdown of law and order in the institution. That argument is standardly used on almost every piece of legislation, not only the prison law library concept but almost every piece of legislation. And I'm telling you there are no more than 15 members of that 80-man body who are prepared to run the risk of having themselves designated by the District Attorneys' Organization, by the Sheriff's Officers' Association of the state, by the Peace Officers' Association, by the Marshals' Association, by the Attorney General's office, by the Superior Court Judges, by the Council on Judicial Justice, and by all those protectors of society and the justice system as a non-supporter of law and order. Legislators do not want to run the risk of being put into that category.

Before we can consider effectively legislating, we've got to in some manner elevate the level of dialogue and the level of understanding in the constituency. Until that time comes those of us who sit in the Legislature engage in trade-offs. Trade-offs are totally unacceptable to a lot of people. Trade-offs mean that let's say a senator desires to have a bill passed on bicycle trails. In return for his bill on bicycle trails, he will give me a bill that establishes an improvement for prisons. Those are trade-offs. Many people can't deal with the question of trade-offs because they maintain that everything ought to move on its own basis and on its own principles. Moving on the basis of a principle is all right if you can achieve the goal, but if you cannot, then you have to engage in trade-offs that don't destroy your commitment to basic principles. If you can trade off the district fair in Santa Rosa for two votes for prison

libraries, you do it. You do it with no hesitancy. I'd like to see them abolish all the fairs in the state, but I cannot wipe out the fairs if I anticipate that tomorrow the same man whose fair I wiped out has got to give me a vote on prison libraries because it's right. What is right in his mind is having a fair. And that's my constituency and that's my reality. And so I've got to deal with that reality. In the process of effectively legislating, we use the tool of trade-offs.

In trade-offs you don't have to elevate anyone's native intelligence. All you have to know is what is his price. He doesn't have to change his mind at any juncture as long as he in fact responds. Let me give you an aside. Just two days ago we had a debate on the Equal Rights Amendment in the State Legislature. And let me tell you about trade-offs and how very narrow-minded people become about their own interests. The Equal Rights Amendment obviously should have been passed, right? Organized labor legitimately walked in and said, "Listen, if that Equal Rights Amendment passes, those minimum protections which are now in the law and that ought to be extended to everybody will be wiped out because all the legislation that is designed for women only is wiped out the minute the Equal Rights Amendment becomes a reality." Labor also said, "Therefore, we think if you're really straight on the issue you ought to make not only the Equal Rights Amendment your ultimate goal but you also ought to retain those protections about hours and weight and overtime. After wiping out the references and the codes to women and children, put in the reference to 'persons.' And then the provisions that are now in the law for protection of just women and children will be on the books for all human beings."

The equal rights supporters say, "Now wait a minute. We're not going to get into any hassle with the California Manufacturer's Association and all the employers in this state because if we make that an issue, they may pull some of the votes off the Equal Rights Amendment." Now they were being very narrow. At that point they were being no different from the oil companies. Their goal in life was more important than the rest of the world. They were willing, if necessary, to agree to the abolition of all those protections or at least make them secondary to their personal goal of the Equal Rights Amendment. Then labor said, "If that's the case, we're going to try to kill the Equal Rights Amendment by putting in crippling amendments. Unless Willie Brown's AB 1710, which is the amendment which would cover everybody, is enacted into law, we will not support the Equal Rights Amendment."

Well the chances of Willie Brown's bill becoming law are not great. Everybody knows that. When you extend all those minimum protections to men, it will mean about a $20,000,000 increase in costs to the employers of this state. And can you imagine the employers allowing anything to be enacted into law at that price? They may let it go at $2,500,000 but they're not going to let it go 100 percent. And so when they tie that into the Equal Rights Amendment it becomes very clear that the Equal Rights Amendment obviously was going to be defeated. So labor became very narrow-minded at that point on the issue. It became very painful because we have two forces whom we support and whom we are committed to, both of whom are being narrow-minded in terms of their own very special interests and they were not willing to engage in trade-offs. All one or the other

had to do was say, "Listen, no problem. We will hold the Equal Rights Amendment and allow you to move AB 1710 ahead of the Equal Rights Amendment. There will be a week's delay while all these people who are badgering legislators on behalf of equal rights will badger them on behalf of AB 1710. And there is no hurry anyway about the Equal Rights Amendment because California is only the 13th state to vote on it." And do you think they would do that? Of course not. And do you think the labor people would say, "Well, in spite of the fact that they didn't agree to support the minimum protections, we're going to go ahead and say 'Support the Equal Rights Amendment' because we believe that to be necessary." Hell no! They didn't say that. They both engaged in that narrow-minded kind of action that eliminated the possibility of effectively legislating on behalf of either cause. And now the equal rights people and labor are angry at each other.

Now how are they going to be successful? Both sides are a distinct minority in terms of political influence. If the battle is being conducted, not against their natural enemy but against each other, they are not engaging in effective legislation. If we are to legislate effectively, if we are to effectively make any changes, we have got to be prepared to engage in trade-offs. Now what do we do when we engage in the trade-offs? We make sure we're always trading upward. We always gain more than we give away. Understand that clearly. The other guy is also trying to trade upward. The other guy is thinking the same way. But to legislate effectively means that in the trade-off you've got to come off better than the other guy. We manage to do that in some cases. For an example,

this year we had to do some trade-offs to save the Equal Opportunities Program. And the trade-off is going to be fantastic.

I think effectively legislating for prison libraries and for prison reforms, if we are to be successful, we are going to have to seriously develop the technique of finding out what the other guy's interests may be and any way we can effectively affect his interests. I think we can convince him that he ought to be of some assistance to us in reaching our ultimate goals.

Now I could probably go on for most of the afternoon, for another two or three hours. Obviously this is a discipline which I have come to after a considerable amount of defeats and pseudo victories. And I have a lot of ideas about effectively legislating. I have made it my business to study every member of the California Legislature. I bet I know a guy's district office as well as he does. I know every item in the budget that affects every member of the Legislature's district, and when I go to talk to him about things, I do not suggest to him that what I am talking about is right. I remind him very subtly of what it means ultimately to the people in his district if in fact the constituency that I'm appearing on behalf of at that moment is happy. To legislate effectively it is necessary to consider every single solitary person that has a vote. You understand what he is about, you understand what moves him, you understand what his personal interests are, you understand the kind of constituency he represents, and you understand what he is trying to get for his constituency to justify his continued existence. The only way to raise him above the fears of reprisal from supporters of law and order is to

directly affect some project, some proposal or some program that will assist mightily in his re-election. If you successfully do that, then I think we can begin to successfully legislate - not only in the area of prisons. Not until we achieve that kind of knowledge, that kind of commitment, will we be anything but a debating society.

QUESTION: What is Corrections doing about the mandate in Younger v. Gilmore? Do you see much hope in coming up with an answer?

TISSUE: Our present plan is to just stay right where we are until the opinion comes out and we see whether the Court approves our plan or whether it wants us to go back to the drawing board. George Nock, the Deputy Attorney General who is handling the case, seems to think that the decision will be out in the next few weeks.

QUESTION: Mr. Tissue and Mr. Hull: the plan before the Court, as I understand it, is for a circulating library. This is going to pretty well duplicate the situation that you had before when you circulated materials from the State Law Library collection. That service is badly eroded by vandalism and loss. What provisions are you making for coping with that? Are you going to duplicate the original situation?

TISSUE: If we tried to do exactly the same thing, I think that would be true. We are very receptive to suggestions for alternatives such as microfilm or anything else that would overcome the logistic and vandalism problem that the State Library suffers from.

QUESTION; The Stanford Law School librarian, Professor Jacobstein, has offered to do some stints down at Soledad, to send down some advance sheets or to have students run down reports of recent cases from all the different jurisdictions. I wonder if the prison administrators might be receptive to this kind of voluntary contribution from law schools with people who do have experience with the West Publishing Company volumes.

TISSUE: I believe they would. Testimony to the contrary, we do allow such things in the prisons. We have allowed supplemental items into the libraries, and these include briefly records, journal publications and weekly law digests. Anything anyone wants to donate of that sort I'm sure would be acceptable, unless there was such a flood of it that administrative handling became a problem. I'm sure it would be made available to the inmates.

QUESTION: Why was it that when the National Lawyers Guild in Los Angeles tried to donate a complete set to Chino you refused?

TISSUE: When you want to donate things like that to the Department, send a letter to the Director of Corrections. The reason I suggest this is that I received a letter just within the last couple of months from Preston Sharp, the secretary to the American Correctional Association, about some Congressman out here who wanted to donate a whole set of law books to the various prisons. They wanted to have a list of the prisons where they could send them. So we sent them a list and said that we would be very happy to accept them and indicated where they could be

sent. Now whether that has gotten there, I don't know, but I know they can be and will be accepted if they're handled properly.

NUNES: May I comment about your comments and his? The Department of Corrections is concerned with vandalism of books. As you know, litigation has been going on for six years in Younger V. Gilmore and the Department of Corrections never managed to put law books in there. They'd rather spend their money litigating this case in the courts. When Mr. Wahl went, about three years ago, into the courts for a federal court order to protect the law books that we already had in there, the Department of Corrections - and that involves these two gentlemen - issued an order immediately to all the prisons to destroy every single book that looked like a law book. In San Quentin I personally witnessed two truckloads full of books being taken to the dump and burned. Remember, this was only two and a half years ago. So much for your vandalism, gentlemen. That is your money. You pay for the books out of your taxes. And to this other point, while I was in San Luis Obispo I personally communicated with Bancroft and Whitney, the law book publishers, and asked if they would donate books. I had a hearing in the Superior Court. They took me in chains, handcuffs and feetcuffs, to the Court downtown in San Luis Obispo, and I pointed out that I'd got some free law books, so let's put them into the prison. The judge refused to issue an order to allow the books in because the Department of Corrections staff, that's not these two gentlemen in particular but it came from Procunier, said, "No, do not accept any law books."

Your answer is that if you attempt to send law books, the Department

of Corrections will say, "Yes, we'll accept any books you want to send." But let me tell you, those books will never reach our library shelves. They'll get dumped in some storeroom and the first chance they get they'll destroy them. They've done it in the past and they'll continue to do it. They defy the courts. They knew that court order was coming out not to destroy the books, yet immediately they loaded those two trucks and took them to the dump and burned them. And these are law-abiding citizens.

QUESTION: Mr. Brown mentioned that the man in prison has to pay more for the same comb than he does in the street. And in talking about the Inmate Welfare Fund, it was mentioned that this was a possible source of buying books, and perhaps some people don't realize that the money in the Inmate Welfare Fund comes from profits made at the canteen where the inmates must buy. And I wonder about creative works, literary and artistic works. The point of my question is, first, how much money is in the Inmate Welfare Fund, and second, has there ever been an accounting which is a matter of public record?

HULL: The State Department of Finance does its periodic audit about every three years. Their auditors check the General Fund. Prior to this year they did an audit of the Inmate Welfare Fund at the same time.

QUESTION: There never has been an independent audit of the Inmate Welfare Fund?

HULL: Not that I know of by other than State personnel but I would really doubt it seriously. Starting this year the law has been changed. There

could be an independent audit of the Inmate Welfare Fund, paid for by the Inmate Welfare Fund of course. An independent accounting would be published and provided to the inmate body. As I recall there's about $2.5 to $3 million in the Inmate Welfare Fund. This is the pooled money in all the inmates' trust accounts. This is their monthly pay earnings, donations from friends and relatives. This is the average size of the fund at any given time.

QUESTION: I think this question has reference to how much there is as a result of the excess prices paid in the canteen and the income gleaned from literary and artistic works produced by the prisoners, not a question of whether or not it's acting as a deposit source of money sent to particular prisoners.

HULL: I'm not prepared to answer that. I don't have the knowledge.

QUESTION: The Inmate Welfare Fund belongs to the inmates and is administered by the Department of Corrections. Should not then the Department of Corrections request other auditors to examine those books for the benefit of those people who are concerned? Shouldn't the information be made available to the stockholders, so to speak? Why haven't they done it in the past?

HULL: The Department has never gotten an outside independent audit because the State already has machinery set up for it. The State Comptroller has the machinery to control the accounting and the State Director of Finance has an auditing staff, a very large auditing staff, to go through and make sure State officials are doing an honest job.

QUESTION: After any audit there is always a completion and a statement thereof made and given to someone. To whom is this given and why is it private and no one else knows about it?

HULL: I don't think it's private. It's a public record. It's available at the Director of Finance's office. It's available at each institution that's been audited. Nobody has asked for it, to the best of my knowledge.

QUESTION: I would like to make an official request for the next audit and for the audit of the previous year, and I would like to know what department I write to get a copy.

HULL: Write to the Director of Finance.

QUESTION: Would Mr. Tissue tell us why the prison librarians are opposed, thoroughly opposed, to law libraries being installed in their libraries as they are.

TISSUE: I think I can express some of the fears that librarians have. They think for some reason or another - at least some do - that simply because they have a law library there's going to be a flood of inmates down there demanding that they give legal opinions. And what I have tried to do right along is to convince them that when the court opinion comes down, they will be handling law books in the same way that we would handle any other book, and they would not be called upon to give legal opinions. As far as I know, it's illegal to do that anyway. But this was the real hang-up of the librarians, both the teacher-librarians and some of the librarians, the fear of being called upon to practice law. The prison

library service is certainly not adequate the way it is now. We've got one librarian in a big institution to try to keep that thing open seven days a week. And if we're going to pile something else on him in addition to maintaining the books in order, they see this as just another straw to break the camel's back. As I told you this morning, if you're going to have a big law library in these institutions that is going to be managed as part of the library, they're going to have to do some major reorganization.

COMMENT: It's not true that it's illegal for a prisoner to give legal opinions to another prisoner. One place you can practice law without a license in the United States is in the prisons, that's Johnson v. Avery, because the legal profession failed to meet its responsibility. They had to do that. The ultimate goal, I think, and one the boys don't like to talk about, is socializing the legal profession.

TISSUE: I know nothing about the law and I'm telling you that our librarians feel that this is an area that they'd be highly incompetent in - giving legal advice. They're afraid of getting involved.

QUESTION: What would be the Department's feeling about a separate system completely outside the Department of Corrections that would provide law library services to prisoners where it bypasses the prison administration completely?

TISSUE: Well, two things. First, I don't know what the Department would feel. I can't speak for the director of the Department. I could tell

you the way I personally feel about it. In our academic education programs, we have a contractual system with the local school districts that works very well, and out of this committee that's looking into our library operations there may be some kind of recommendation that we contract through the local library system for our regular library programs. The other thing, you are not going to put something in a prison that's totally isolated from supervision by the prison system, as I see it, an operation within a prison over which the administration has absolutely no control. My opinion on that one is, that isn't going to happen.

ROBERT ENSLEY: That's being done in Illinois. They have a plan where they have just started a cooperative venture between the public library system, the Department of Corrections and a particular prison with an experimental program, and it involves putting a public library branch in the prison administered by the public library, its staff, books, collections, etc., from the public library, the building and furniture and space being provided by the prison.

TISSUE: Has that plan been approved?

ENSLEY: Yes.

TISSUE: Well, I couldn't speak for Illinois, but I suspect that they would hold the superintendent of the prison responsible for all the things that happen in that prison, and that even in Illinois he would have some control over the library if it operated within the confines of the prison.

WILSON: Maybe Mr. Sims would have something to say along these lines.

SIMS: I think when the county jail law library program emerges at San Bruno, it will be very much along the lines you just suggested in the Illinois State Prison system. As a matter of fact, during the intermission I was greeted by an enthusiastic response to my speech. Several members of the San Francisco Public Library staff who are here today came up and said, "You rotten son of a bitch. Why did you say that we're giving you the books? We're not giving you the books. The collection at the jail is a branch deposit." And I therefore apologize to the San Francisco Public Library staff. That was my mistake and as far as I know that's the understanding. There will be a deposit library in the San Bruno County Jail Facility. Whether or not it's set up by San Francisco Public Library people, I don't know. I can tell you this. If they want to do it, they sure as hell can do it, because it would be a nice thing to have happen, and we'd certainly be willing to take the help, but indeed that facility at San Bruno should be a branch facility of the San Francisco Public Library. They will be their books. I guess they pretty much have the expertise for what books they want in there, although they've been very good about soliciting my opinion so far.

QUESTION: Mr. Sims, you talk about putting a library in the jail at San Bruno. What do you propose to do about the jail at the Hall of Justice, because it seems to me that people being held on pre-trial detention at the Hall of Justice can probably make better use of the books than the people who are on short term sentence over at San Bruno.

SIMS: The reason that our objective is first at San Bruno is very simple. The Hall of Justice physical facilities are so cramped now that on an average day there are 70 men sleeping on the floor on the men's side and about eight or nine women sleeping on the women's side. It's a much smaller facility. It was not designed for any recreational area. There is no recreational facility in that jail, period. There is no room. It's a self-contained unit.

QUESTION: Why do you allow people to stay there then? When you're in charge of the prison why do you let people stay in those kinds of conditions?

SIMS: Well, I'll tell you. One thing that we've tried to do and that we have been doing is transporting people from that facility to San Bruno and using San Bruno facilities to a maximum extent, but we still have people on the floor. If the situation continues, we'll simply have to bring suit, and I don't think there's any hesitancy about doing that. That becomes complicated also because there is pending a large federal Civil Rights Act case in the United States District Court in San Francisco that actually went to trial last July and has been under submission since last July. The overcrowding at the Hall of Justice facility is one of the central allegations of the suit. We're just kind of sitting around waiting for that decision to come down. It's been a long time.

QUESTION: This morning when S.B. 1273 was discussed, I think a proposal for a law library council was mentioned which would bring people from the outside into the prisons. I wonder if Cy Silver would briefly tell us about it.

SILVER: The idea was to get away from the administrative problem as mentioned by one of you two gentlemen from Corrections, the problem of a fixed list of books which the statute would create. If you want to change the list of books, you have to go through the whole legislative process all over again. So the bill was amended to specify no particular books but rather to have a small group of people with correctional, library, legal and combined expertise draw up and administer a list of books which would be subject to annual or periodic review so it would be kept up to date and responsive.

QUESTION: Wasn't that going to be broader? Wasn't there any policy for how the program was going to be run or was it only going to be books?

SILVER: It would administer, as I recall the bill, policy for the law library part of the operation as well.

LEWIS: I might add that administration was one of the provisions which was most strenuously objected to by the Department because of what they call their security problem in having people from the outside having free access to the prison. They objected to this section most strenuously and, of course, that was one of the great things, we thought, about the bill, namely, that people on the outside not under the direct control of the Department would be administering the program and would have access to the institution.

JOHN MASON: It would seem to me that actual contact by the prison administration with any sort of legal library activity at all would be

totally defeating the purpose, because if a man feels that he has a grievance against the prison or something like that, then he should have a clear access, and there shouldn't be anyone on the prison staff standing between him and the court. I'm an employee of the Montana State Library. I work at the prison in a small library there. As far as my legal materials are concerned, we Xerox anything that inmates want from the State Law Library. It's quite quick, there's no six-month's waiting or anything like that - more like three days.

QUESTION: Do you make a charge for the photocopying?

MASON: No. That's handled by the State Law Library.

QUESTION: Is there a photocopy facility in the Illinois system?

ENSLEY: We give a free photocopy of any requested items that are in the State Library, and since we cannot have an extensive law collection, we have a backup photocopy service in court libraries across the state.

QUESTION: What's the time between the time you get a request and the time the inmate gets it?

ENSLEY: Probably one day or two. We do have students who are under an Office of Economic Opportunity program to do the bibliographic searching, but the citations that come in from the penitentiaries are quite complete usually, so that we don't have to do much verification. We just began a new program in February, 1972, and there will be a brief description of it in the next issue of Illinois Libraries. We have one other library

system that is serving seven correctional facilities as of February 1st; another nine systems that have correctional facilities will start service in the next few months. Our Department of Corrections received a law enforcement grant to extend the experiment to all of the institutions. The Department of Corrections takes care of security and facilities and the public library runs the collections.

TISSUE: The reason I ask whether that proposal has been approved is because I was sent a copy. Now just to say one thing about the question here a while back, about materials coming and going in the prison libraries, I suspect that in Illinois the warden of that prison where that library is operating is responsible for the operation inside the prison walls. Has he the overall responsibility for that library as well as he does the rest of the institution?

ENSLEY: In the contract that was signed by the Department of Corrections Director, the Secretary of State, and the President of the Library Board, the only authority that the warden has is in security; he may remove a book if it's a threat to security, but he has to give written justification within three days to the Department of Corrections, the State Library and the Public Library.

TISSUE: Security was the thing that I was really talking about. Of course you have to leave that with the prison authorities.

ENSLEY: The warden is responsible insofar as he has to justify the removal of any book on the grounds of security.

QUESTION: Do you have any training facilities for training inmates in the use of legal materials?

ENSLEY: This is a thing to come.

WILSON: Are there any models for such a program?

JOAN GODDARD: I understand that in Minnesota there is a very small beginning on training inmates in the use of the legal collections, at Stillwater Prison, I believe, and it's a Department of Corrections librarian from St. Paul who gave me the information.

QUESTION: Mr. Tissue, you said that some of your libraries were run by guards and some by teachers. Do you have openings for professional librarians and how do you advertise the openings?

WILSON: That's a question I should have asked myself.

QUESTION: Do you need a job?

WILSON: Not right now, but I have a hundred people who do.

TISSUE: Four male librarians have come up and offered their services since I made that statement this morning.

QUESTION: How about females?

TISSUE: There are no women librarians. The State Personnel Board normally recruits for all civil service positions. Mrs. Dalton here of the State Library sits on all of the civil service panels. I'm sure all of you know how the civil service system works as far as the lists

are concerned. They create a list, they advertise for applicants through the schools, like here at Berkeley, and they hold oral examinations. So then they establish the lists and as a vacancy occurs, they call from the list. Now you ask about the correctional officers in institutions. In the two places where they're working, it was the warden's option to use the correctional officers for the time being. And certainly in one of the institutions it will be resolved in July or August when the sick leave on the person there runs out. He's still an employee and can use up his vacation and sick leave time if he chooses. I'm hoping that I can see the day when we will have women librarians. I hope that we can staff all our libraries with professional librarians. I have no opposition to women working in prisons; I've worked with them for years as teachers, and they were a very good influence on our inmate population.

QUESTION: I have a question about inmate training and legal libraries. I wonder if there is something that could be worked out so that some of the inmates who were trained in the prison legal libraries could come back and work after their release.

WILSON: I'm not sure they'd want to.

HULL: If you have any more questions, if you'll write to either one of us in care of the Director in Sacramento we will definitely answer.

TISSUE: Now I want to say something. If you have law books that you want to donate, write me a letter. I will get a determination for you. I don't see any problem with that.

QUESTION: Mr. Brown, Mr. Lewis: earlier I spoke to Mr. Lewis about the pragmatics involved in the indeterminate sentence. As a prison lawyer who for five years out of ten years in prison fought that law, pragmatically speaking, I realize that you said, Mr. Brown, that we're not going to get effective legislation so long as there are the contemporaneous constituencies in the Legislature. Would then either of you gentlemen support an alternate type of attack upon the indeterminate sentence law which in effect is the responsible agent for the ineffective law libraries in the prisons. Section 5079 of the Penal Code, if it were attacked, would remove the bar to prison law libraries and many other things. Would either of you gentlemen respond whether it would be possible legally in today's world realistically to have a unified legal attack upon the indeterminate sentence law, statute by statute, if necessary, and in multiple courts if necessary. Section 5079 is that provision of the Penal Code which grants the Director of Corrections authority to establish psychiatric units. Within the administrative provision of 5079 the wardens are granted the power to have or not to have prison law libraries. It is part of the administrative procedures allowed the wardens through Section 5079; and the power to make and to provide the rules in the prison system is Section 5020. My question, Mr. Brown, is this; if the indeterminate sentence law is the dragon that we're all trying to get at, then would it now be possible today, since it's almost impossible to get any kind of reforms through the Legislature, to make, if necessary, a section-by-section attack upon that law and, if necessary, a court-by-court attack upon it?

BROWN: Well, I would not comment on the possibility of a class action law suit on those sections of the Penal Code to which you refer. However, I won't comment on those because I'm not competent to comment on the possibility of success in that area. I don't know how Mr. Sims and Sid Wolinsky and the lawyers who really have a handle on class action lawsuits think; I would defer to their judgment. I would want to be part of the effort if they elected to do it, because I have enough confidence that their legal theory would be sound and would, in fact, produce something more than just accelerated hopes for success in that area. With reference to the question of whether or not the indeterminate sentence can be effectively changed by any other means - I suppose that is the other half of your question - the Adult Authority some two or three months ago decided to modify indeterminate sentences. For every person under less than a life term sentence, I believe, a release date is to be set within six to twelve months of his first incarceration and for every person who has a life term it is to be set somewhere within twelve to 30 months of his first series of incarcerations. The problem is that they can always modify upward. You're in there seven months and at the beginning of the eighth month they hand you a slip that says that you will be released from prison in 39 months. If they decide in the 38th month to change that and give you five more years, they can do it, so that's not a successful modification, in my opinion, of the indeterminate sentence law. If a parole date has been set for a certain inmate and there is no change in this prisoner's conduct except that in the eleventh month of the twelve-month release date the guy starts subscribing to The Militant

and as a result of that his release date is taken away from him, I suspect that he has a good case. There can be a successful law suit initiated on behalf of total restoration of all those dates that have been similarly rejected or snatched because of activities unrelated to those which are on the list of things that are supposed to be done to meet the bench mark.

QUESTION: Another question for Assemblyman Brown. You spoke of the legislators, especially the conservatives, on your committees. On any of your committees do you have any ex-prisoners on the staff?

BROWN: Well, first of all I don't believe it is necessary for me to fire Clarence Williams, who is a young, black, original ghetto dweller, who has the same kind of record that most blacks have between 18 and 21 years of age and whom I picked up as a consultant and assigned a responsibility in that area. I have one staff man. I don't think it's proper to fire him just to have someone who is an ex-con. I think that's not in keeping with what I want to follow. I take people on the basis of where they are and deal with them accordingly. Nor do I think that the status of an ex-con would prohibit one from coming aboard. Nor do I think, incidentally, that just because you're an ex-con that your head is on straight with reference to prisons and prison systems. Nor do I think that because you're not an ex-con that your head isn't on straight with reference to prisons or prison systems. That's the one committee I can staff, that one sub-committee, and I have one assignee in that job. That's the reason why he's there, and that's the reason why he isn't an ex-con.

QUESTION: Have there ever been ex-cons on a California legislative committee?

BROWN: Craig Biddle, who was formerly the Chairman of the Criminal Justice Committee, established a sub-committee of his Criminal Justice Committee on Prisons and he hired an ex-con who ultimately, I think, probably participated in organizing the Prisoners' Union. The guy's name was Ernie Harris, and he has done better than five years at San Quentin on a robbery charge. He's originally from Watts. There have been at least two other persons retained as consultants just because they were ex-cons, not so much because they had an ability in a certain area but just because they were ex-cons and each chairman wanted to say he had an ex-con on the staff. I don't know if they had them from the Seven Step Foundation. There is a real human question and human ability that's acquired by an ex-con that extends far beyond what happens to the Inmate Welfare Fund and whether or not it's audited and accepted. So I think it is impossible, frankly, to think in terms of hiring a guy to do just ex-con work simply because he is an ex-con. His head ought to be on straight with reference to those issues also.

QUESTION: When they give a man a future parole date, it's not worth the paper it's written on really. The power relationship is what is really important. The Adult Authority maintains its discretionary power to keep this man in prison if they want to in an arbitrary manner without giving a substantial reason. They can give him additional time and this is what's important. They can do this without you having anything to say about it.

Do you think people should try to legislate the amount of time that they can give a man and say it can't be changed once it's set?

BROWN: I think my response to that would be as follows. My ten or 15 minute formal presentation earlier indicated it might be feasible. As to whether or not it is appropriate to continue to legislate, it is not only appropriate, it is absolutely necessary. I do not accept the Adult Authority's token gesture of giving a piece of paper. I say the problem with that is that when they give you your time, that doesn't really mean you're got your time because it's not the law. The law should be that once the Adult Authority decides and evaluates that you should spend x number of years being rehabilitated and that these are the things that you are going to have to do to achieve that, it seems to me that they ought to be locked into that decision, and unless you commit a new crime in the institution, there can be no modification of that lock, except downwards. If in fact you meet the bench mark warrant at an accelerated period beyond their ability to evaluate, then the lock ought to reduce itself, not expand.

QUESTION: That would be according to the Constitution. You know they're not going to go for that.

BROWN: I don't think anyone ought to back off any governmental unit simply because the governmental unit responds three percent of what it should respond. Until there is a 100 percent change, it is absolutely necessary to continue.

WILSON: I think at this point we should try to steer things back to questions about what to do on the library side. We've been covering quite a lot of ground and we haven't gotten close to anything very specific in terms of action.

NUNES: The whole discussion of the Adult Authority underlines the fact that any kind of meaningful law library must be structured outside of the actual administrative authority of the Superintendent of Prisons. That can be exemplified by the kinds of petty hassles and harassment that anyone who has ever tried to do anything for prisoners can testify to with full vigor. There is just an obstructionist mentality in prison administrators which suggests that this authority for withholding books from prisoners or anything else ought to be, as much as possible, placed outside any kind of correctional structure.

BROWN: It seems to me that possibly library people in control ought to consider seeking funds from the Safe Streets money or the Council on Criminal Justice or whatever that disbursing agency is. They ought to put together a proposal comparable to what Illinois is doing with the same kind of civilian involvement as distinguished from prison involvement. I don't think they'll get hung up on arguing about who handles security. I personally think you'd lose the security argument and probably do a disservice to the proposal if you present it to the prison authorities. I have a hunch you could get a private project going that would be a forerunner to a Petris bill that would in fact have a chance of passing the Legislature.

QUESTION: Do you think that the legislators would go for a plan organized on a nation-wide basis for every state to work cooperatively with other states?

BROWN: Well, I think you're about 30 years away from getting all states to work collectively. I don't want to rain on your parade, but I don't think it can effectively be done. I think that if we got a project going just for the state of California we would achieve more. In addition to that, one of the best things that occurred in the Legislature since I've been there was a teach-in by law students throughout the state of California on the question of whether or not California citizens should be drafted into the military service, the Vasconcellos anti-draft bill. Most legislators, to the tune of maybe 75, were totally hostile and adverse to the concept. The bill did not pass, but heads were changed and minds were turned around and hostility in fact was substantially reduced as a result of that teach-in. Dealing with those cats, you had to have your hair cut like Richard Sims has his hair cut. That was necessary. That was the kind of law student that got in to see the legislators. They avoided the hump of physical appearance and then proceeded to deal with the issues. I suspect that if we had a pilot project proposal and the librarians and the students of library science wherever they happen to be decided one day to go to Sacramento and just go from office to office, then that would affect the legislators. Once you have a proposal, then you have something to get your teeth into.

WILSON: Thank you, thank you. Well, there's a definite program for us to start. It seems to me that if there is one thing that can be learned from this, as far as I see it, it is that just a pile of law books is not going to do the trick.

QUESTION: It was mentioned before that even the librarians in the prisons are afraid of having law libraries because they are afraid to give legal service of whatever nature. It seems to me that it's up to librarians to change their position so they could use the legal materials to the benefit of the prisoners. I would like to ask Mr. Gregory how he sees the librarian using the legal collections to the greatest benefit of the prisoners.

GREGORY: Well, we cannot offer ancillary services without lawyer services, just the prison library services and me and whatever inmate help I can have. My inmate clerks who are really jailhouse lawyers know far more about law than I could possibly learn. And I can just turn them loose with my collection and the inmates who need the help. They are helping them. They may be getting a few cigarettes under the table but they are helping the inmates who do not have any legal training and not much talent to do anything with it if they have. I see the role of the librarian in the prison law library as one of providing material. We've got to have the material. And I would, if I were required to do so, take a course in legal librarianship and help with legal research. I couldn't give legal advice because I am not an attorney and I am forbidden by law, but I would do what law librarians can do for the general public.

QUESTION: I would like to make a suggestion that the School of Librarianship at the University here or at San Jose institute an extension course for practicing librarians to learn something about legal bibliography.

COMMENT: You can take the law librarianship course, Librarianship 225, now through Extension. It presents a problem in that it's given from 3:30 to 5:30, but it's only one day a week; you pay about $50 and you can take it for credit through Extension. It's given once a year in the spring.

WILSON: If there's a big demand for it, we can do it again.

COMMENT: There are other existing courses. The People's Law School in San Francisco sponsored by the National Lawyers Guild gives a course in legal research as does the Grove Street campus of Merritt College.

GEORGE FARRIER: If I heard Assemblyman Brown correctly, he was suggesting that what the public could do would be to write a proposal under the Criminal Justice Act. We are doing this now, working with the sheriff of Santa Clara County. We have the land for proposed new facilities in Santa Clara County, but they're a couple of years away yet. Now we're working with the Concerned Students of San Jose State College and I can see the possibility of this group helping us write the proposal for a pilot study. Our county employees and the San Jose State College Library School students are working together on the proposal. Larry Harrison of our county library commission, who is here today, is chairman of our subcommittee on this study. So I think we could work together on a pilot proposal. What you have in mind is something that is indeed similar to the Illinois system.

COMMENT: Assemblyman Brown mentioned a pilot proposal with some of the Criminal Justice money.

WAHL: I think that the State may have done this already. On March 9, 1972, we filed and served a set of interrogatories in the Gilmore case to find out whether they have received any money from or are going to receive any money from the Law Enforcement Administration or the California Council on Criminal Justice. They refused to answer this interrogatory. They object to it, saying it's none of our business where they get their money to fund whatever books they're going to put in the law library, and this is one of the issues that will be fought out at the hearing on our objections to their proposed regulations. If any of you are going to get into this, I would be very interested in being kept informed of what you find out. Also, if you hear of any attempts to donate books to prisons that are rejected, such as the gentleman in the back mentioned earlier, I would be very interested in this. This would be of evidentiary value in the prison law book case.

MARY STEWART: I do have some information for you. The County of Alameda, the library there, applied to the California Council on Criminal Justice for monies to establish a real library at Santa Rita and we were turned down. Besides, most of the people who give money are more interested in deflective programs - keeping people out of jail - rather than in rehabilitation once a person is in jail. Actually they're more interested in helicopters.

SIMS: It's been my experience that California Council on Criminal Justice money is spent in very much the same way you'd expect any other money being spent by governments to be spent. It's spent by people who have access to politics and are influenced by political pressures. I would guess that, if your library association is coming in against the Alameda County Sheriff's Department, the Los Angeles Sheriff's Department and whatever, you ain't going to have much chance. If you do get together and write a California Council on Criminal Justice proposal for libraries in state prisons, I would hope that you really sit down and talk political strategy, line up some politicians, line up the bar associations behind you, see if you can get the district attorneys. God knows, it's hard, but in spite of the fact that you have a fund-allocating system on the books that looks very rational, it's no more rational than any other political system, and in my experience that's the way that California Council on Criminal Justice money gets out. It's just like the Legislature. So if you're going to do it, be smart about it, find out about it, do it the right way, and you'll get your money.

QUESTION: In San Francisco the philosophy that we're pursuing is that we tried applying for federal funds but we didn't get very far. We finally have taken the attitude that the only difference between the people that are in the prisons and the other patrons of the San Francisco Public Library is that those people can't come to us. We're trying to do it out of our own funds and go there. And I'd like to see more of you willing to try some things that way. We'd like to work with you if you have some ideas.

WILSON: What about the possibility of State funds or through the State Library. Would Mrs. Dalton like to say something about that?

DALTON: The State funds we have are granted for State Library Services only and under the Public Library Services Act for public library systems. We have federal funds, however, under the Library Services Act, Title I, for institutional library services but those funds are limited and could not possibly cover the costs of legal library services in institutions. Anyway I think it's going to take more than the California State Library to provide the legal library services needed. I think it's going to take all of us - all of you people - just like you are doing in Berkeley in developing this program today. I was thinking as I was sitting here that we should all get together and develop a proposal and really do the sort of thing that Assemblyman Willie Brown proposed. That's the only way we will get it done. I went through all the Law Enforcement Assistance Administration proposals that had been made before I came here today. I didn't find anything related to a library. Cy had sent me a list of proposals - that is where I read about the San Mateo kindergarten project. But there is nothing listed there related to libraries. So I think there will have to be another source of funding. Marjorie and I have talked about all of this too - that we've got to have some power. Now the State Library has some, but it sure doesn't have a lot in the sense of going out and getting money. And for library services that can be funded under the Library Services Construction Act - that amount of money is just not there, that is, for legal books. You'd be out of money before you even started - the costs are high. We're not talking about penny-ante money,

you know, when we're talking about law books in prisons. So if some way or other the people who are sponsoring this program today with the State Library working with them can develop a proposal, we will have a good chance to secure the necessary funding. I have a proposal that has been sent to me from McNeil Island. This is a federal penitentiary; they propose to work with the Pierce County Library in Washington State in providing library services. You know there are a lot of proposals; there are good models; and all we have to do is get on the ball and get one done.

WILSON: All right, who volunteers?

LADY: I volunteer.

WILSON: Good.

CELESTE MACLEOD: Today we had all the people here sign their names and addresses so if some action comes out of this conference we can send out notices, and those who are interested can participate. If you have ideas, send them to the Prison Law Library Conference address on the program. If we want to get a good project going, we need people with the ideas and we need people with political contacts. I think it's just a matter of all the people who are interested putting down their ideas and then getting together to work out a proposal. Once we get organized, we can send out notices to everybody who came today.

FARRIER: To some extent we certainly can volunteer in some way or another, although we don't have any state correctional facilities in Santa Clara County.

DRAFT STATEMENT ON PRISON LAW LIBRARY SERVICE
PREPARED FOR THE CONFERENCE ON "PRISON LEGAL LIBRARIES - IDEA INTO REALITY", BERKELEY, APRIL 22, 1972,
BY CY H. SILVER, LAW LIBRARIAN, CALIFORNIA STATE LIBRARY

I. Background

A. The court decision. Younger v. Gilmore, __U.S. __. 30 L.ED 2d 142,92 S.Ct. 250, affirming Gilmore v. Lynch, 319 F.Supp. 105 (1970), requires the California Department of Corrections to make legal expertise available to its inmates. The expertise can be in the form of bodies -lawyers, law students, etc.; books - appropriate law libraries, unlike the existing selection which was found to be fundamentally inadequate; or some other unspecified means.

B. Remedy

1. Responsibility. The court requires the Department of Corrections to provide the expertise.

2. Method. Lawyers are expensive - Governor Reagan vetoed the 1971 prison ombudsman bill, AB 1181, as being too expensive. Further, inmates do not always have confidence in lawyers. Law students - or other volunteer programs - have the same drawback as volunteer programs have always had: uncertainty of continuity.

Books, on the other hand, after the initial investment are inexpensive to maintain when compared to lawyers. Books do take more work on the inmates' part than would lawyers. However, there are existing libraries and librarians in the prisons to service books.

II. Correctional law library service.

A. Purpose.

1. Required. From the courts, to enable inmates to pursue legal remedies both for post-conviction relief and against existing administrative practices.

2. Other. Two non-mandated purposes are to enable inmates to pursue their civil legal affairs, such as family matters or copyright; and for general educational purposes.

B. Availability.

1. Intra prisons. Each prison should have a basic law collection (characterized below in C.2). There should be a backup collection in at least one prison library, available for local use there as well as for interlibrary loan to the other prisons. It is estimated that this structure would fill at least 90 percent of inmate requests.

2. Outside. The remainder of inmate requests will be met by interlibrary loan from the State Law Library.

C. Scope.

1. Specific titles should not be required by policy or statute: to alter such a fixed list is too cumbersome.

2. Specific needs:

a. Court reports and their indexing apparatus

(1) basic: recent and current California and Federal

(2) backup: older California and Federal complete; other states.

b. Statutes and their indexing apparatus

(1) basic: California; Federal criminal, procedure, court rules, civil rights.

(2) backup: criminal law and procedure of other states; complete Federal.

c. Explanatory and guidance material: treatises, dictionaries, encyclopedias, research guides.

d. Current awareness tools in criminal law and prison law.

III. Administration.

A. Organization. The law library should be part of the established prison libraries, under the Department of Corrections. Separate organization would be wasteful and duplicate.

B. Personnel. The prison librarian will administer the law library in his library. He will need special training for this (perhaps a two-week institute). He should have full-time subprofessional help, to assist both in the law library and the general library, and to allow reasonable service when the librarian is absent. In addition, the backup library will need a half-time clerk to handle the shipping and paperwork of interlibrary loan.

C. Coordinator. The law library program within the prisons will be administered by a Coordinator who is certified by civil service as a Law Librarian. He will be stationed with the backup library (in addition to the prison librarian there). He shall be responsible for maintaining the backup collection, and for selection and training for the basic collections in all the prisons.

D. Mini-institutions. These are proposed to have ca. 400 inmates each. Their small size will require new patterns of service. They should have a collection of several hundred volumes, supplemented either by responsive interlibrary loans or by visits under guard to a nearby law library.

E. Equipment. In addition to standard library furnishings, each library must have a copying machine for inmate use.

IV. Advisory body.

A. Need: Corrections needs to test the adequacy and acceptability of its law library program among both its users and the informed citizens of the state, and the citizenry should understand the scope and purpose of the program.

B. Composition.

1. The Prison Law Library Coordinator.

2. The Law Librarian of the California State Library.

3. Representative of the inmates.

4. Representative of the State Bar Association.

5. Representative of a law librarians' organization. Alternatively, law librarian nominee of the University of California Library Council.

6. Representative of the American Correctional Association.

C. Duties.

1. Individual members (in addition to the Coordinator) should visit the libraries on a rotating schedule.

2. Make such recommendations to Corrections as it feels appropriate.

3. Report annually to the Legislature on the Body's activities.

V. Costs. (very rough order-of-magnitude estimate)

A. Each basic collection can be provided for $12 to $15,000, plus annual upkeep of $1,500.

B. A combined backup-and-basic collection costs $80,000 plus annual upkeep of $10,000.

C. The Coordinator costs $15,000 plus fringe.

D. A library technical assistant costs $8,000 plus fringe.

E. Housing; unknown.

F. Copying machines; may be self-supporting.